In the

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, *et al.*,
Plaintiffs and Respondents,

vs.

KINGS COUNTY, *et al.*,
Defendants and Petitioners.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

LARRY G. MCKEE
County Counsel
Kings County Courthouse
Hanford, California 93230

RODERICK WALSTON
Special Deputy County Counsel
6000 State Building
San Francisco, California 94102
Tel.: (415) 557-3920

Attorneys for Defendants and Petitioners

SORG PRINTING COMPANY OF CALIFORNIA, 546 FIRST STREET, SAN FRANCISCO 94105

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OPINION BELOW

The decision of the U. S. Court of Appeals for the Ninth Circuit herein, and its order denying the petition for rehearing, are attached hereto as Appendix 1. The court's decision has not yet been officially reported.

JURISDICTION

The decision of the Ninth Circuit was filed on November 3, 1975. Its order denying the petition for rehearing was filed on March 26, 1976. The petition for a writ of certiorari is due on or before June 24, 1976. *American Railway Express Co. v. Levee,* 263 U.S. 19 (1923). This Court has

jurisdiction under 28 U.S.C. § 1254(1). This petition is submitted under Rule 19(b) of this Court's rules, in that this case presents an important question of federal law which has not been decided by this Court.

QUESTIONS PRESENTED

The essential question in this case is whether counties, in those States which have received jurisdiction over Indian reservations under Public Law 280, 67 Stat. 588 (1953), 28 U.S.C. § 1360 (1970), may apply their land use laws to Indian property located on such reservations. This question is presented in the following forms:

(1) Does Public Law 280, in subjecting Indian reservations to "those civil laws of such State," exclude the application of "county" laws on such reservations?

(2) Does Public Law 280, in prohibiting States from imposing a "regulation of the use" of Indian trust property inconsistently with a federal "treaty," "agreement," "statute," or "regulation," authorize the issuance of a federal regulation *after* the passage of Public Law 280, which regulation precludes counties from regulating the use of Indian trust property under *any* circumstances?

(3) Does the prohibition in Public Law 280 against any State "encumbrance" of Indian trust property, include county land use ordinances?

(4) Does Public Law 280, in prohibiting the States from regulating the use of Indian trust property inconsistently with a federal "statute," prohibit the county from applying its land use laws to property which is the subject of assistance programs administered by federal agencies pursuant to congressional authorization?

FEDERAL LAWS INVOLVED

This case involves (1) an interpretation of Public Law 280, 67 Stat. 588 (1953), 28 U.S.C. § 1360 (1970), set forth in Appendix 2, (2) a determination of the validity of a regulation issued by the Secretary of the Interior in 1965, 25 C.F.R. § 1.4, set forth in Appendix 3, and (3) an interpretation of 25 U.S.C. § 465, set forth in Appendix 4.

STATEMENT OF THE CASE

1. Statement of the Facts.

The Santa Rosa Band is an Indian tribe organized under section 476 of the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-478. The tribe occupies the Santa Rosa Rancheria in Kings County, in the State of California. Title to the lands is held in trust by the United States for the benefit of the tribe. 25 U.S.C. § 465.

Plaintiffs Barrios and Baga, both members of the tribe, applied to the Bureau of Indian Affairs (BIA) for funds to purchase mobile homes, to upgrade their existing housing on the rancheria. CT 81, 84.[1] The BIA is authorized to grant such funds as part of its Housing Improvement Program (HIP). The BIA requested the plaintiffs to select mobile homes for purchase, and to submit the purchase contracts to the BIA for approval. *Ibid.* The plaintiffs thereupon selected mobile homes from a local dealer, costing $6200 and $7000 respectively, and submitted the purchase contracts to the BIA for approval. *Ibid.* The BIA approved the contracts, and issued an HIP grant in the amount of $3500 to each plaintiff. Subsequently, the Indian Health Service (IHS), a branch of the Department of Health, Education and Welfare, made plans to provide water and plumbing for the mobile homes.

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1. "CT" is a reference to the Clerk's Transcript.

The plaintiffs plan to use their mobile homes on lands in the rancheria that, under the ordinances of Kings County, are zoned for general agricultural use. CT 126. The county's ordinances, however, authorize the use of mobile homes within that zone, subject to approval by the county's zoning administrator. Such approval is routinely given if the applicant submits a site plan, showing the location of streets, lighting and the proposed use of his mobile home, and if his proposed use does not substantially depart from the purposes and intent of the zoning ordinance. CT 137. Administrative approval can initially be given only for a period of two years, but such approval can be renewed for additional periods and in fact is routinely renewed upon application by the homeowner.[2]

The applicant is not required to pay any fees for such administrative approval, except for a fee of $30 to compensate the county for part of its expenses in preparing and considering an environmental impact report. CT 126. The county is required to prepare and consider such a report under the State's basic environmental land use law, the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000-21176, which requires counties to prepare and consider such reports prior to approving any land use which may have a significant effect on the environment.

The county's building ordinances also require the plaintiffs to acquire permits for electrical and plumbing hookups. CT 120-121. The ordinances require each plaintiff to pay

2. County records reveal that 287 applications for renewal have been submitted in recent years by persons situated similarly to the plaintiffs, and all have been approved. The county routinely approves such applications if the mobile home is the only dwelling on the site. This information is contained in an affidavit by the Planning Director of Kings County, Defendants' Exhibit AA, which was not before the Ninth Circuit. We are filing a motion with this Court to augment the record by inclusion of this affidavit.

a fee of $19.50 for the permits, and for inspection services. *Ibid.*

Thus, the county's ordinances do not prevent the plaintiffs from using their mobile homes on the rancheria. Rather, they require only that the use of the homes be consistent with various zoning, environmental and building laws, and that minor fees be paid to compensate the county for part of its expenses in administering these laws.

The plaintiffs refused to comply with these laws, or to pay the fees required thereby. Instead, they brought an action in a federal district court, invoking the court's jurisdiction under 28 U.S.C. § 1331. The action seeks declaratory and injunctive relief to restrain enforcement of the county's various ordinances, as applied to the plaintiffs. The tribe, many of whose members are also awaiting HIP mobile home grants from the BIA, joined the action. The district court granted the declaratory and injunctive relief sought by the plaintiffs, and the defendants appealed.

2. Decision of the Ninth Circuit.

The Ninth Circuit held that county land use laws are not applicable on Indian reservations under Public Law 280, 28 U.S.C. § 1360, and thus that Kings County's ordinances are not applicable to the plaintiffs. App. 1-27. The court ruled, first, that Public Law 280, in subjecting Indian reservations to "those civil laws of such State . . . that are of general application to private persons or private property," subjects Indian reservations only to "State" laws, not "county" laws. App. 6-18. Second, the court ruled that Public Law 280, in precluding the county from imposing a "regulation of the use" of Indian trust property inconsistently with a federal "treaty," "agreement," "statute" or "regulation," precludes the application of county land use laws by virtue of a federal regulation prohibiting

counties from regulating the use of Indian trust property, 25 C.F.R. § 1.4; the court upheld the validity of the regulation against the charge that it unlawfully revoked authority given to the counties under Public Law 280. App. 18-22. Third, the court ruled that Public Law 280, in precluding the States from imposing an "encumbrance" on Indian trust property, independently precludes the county from regulating the use of such property, App. 22-25. Fourth, the court ruled that the county's ordinances are inconsistent with various federal statutes authorizing federal agencies to administer Indian assistance programs. App. 25-27.

ARGUMENT

I. Importance of the Case

This case raises the question whether local land use ordinances, adopted pursuant to the requirements of State laws, are applicable on Indian reservations in those States which have received jurisdiction over Indian reservations under Public Law 280, 28 U.S.C. § 1360. Public Law 280 transfers such jurisdiction to seven States, including California.[3] Moreover, federal law provides a procedure for the assumption of such jurisdiction by other States in the future. 25 U.S.C. §§ 1321, 1322. Thus, the issue in this case is important not only in California, but also in other States which have received jurisdiction under Public Law 280, and in still other States which may receive such jurisdiction in the future.

This case is particularly important in California, for there are a panoply of local land use laws that are generally applicable to private persons and private property, and

3. The six other States are Alaska, Minnesota, Nebraska, Oregon, Wisconsin and Washington. 28 U.S.C. § 1360; *Snohomish County v. Seattle Disposal Co.*, 70 Wash. 668, 425 P.2d 22, 25 (1967), *cert. denied* 389 U.S. 1016 (1967).

thus are potentially applicable to Indians and Indian property. These laws, some of which we shall discuss more fully later, seek to protect a wide variety of interests of local signficance, and indeed of Statewide significance as well. In fact, virtually all such local laws are enacted and enforced pursuant to the statutory directive of the State's Legislature. Major examples of such laws include those that (1) prevent land from being developed or used in a manner that may impair the State's environmental quality, (2) prevent homes from being built and used, and mobile homes from being used, in an unsafe or unsanitary manner, (3) prevent land from being developed or used in an inefficient and disorderly manner, and (4) protect the quality of the State's water, air and coastal resources. See pp. 19-21, *infra*. The Ninth Circuit expressly disapproved the application of some of these laws on Indian reservations, and its decision may be construed to disapprove the application of the remainder, and many others not mentioned. Thus, the court's decision prevents California and its political subdivisions from fully protecting the vital interests which led to the passage of these laws.

The importance of this case is heightened by the fact that it raises an issue, *i.e.* the applicability of county land use laws on Indian reservations under Public Law 280, that is being litigated with increasing frequency, particularly in California. In fact, this very issue has been decided by four federal district courts in California prior to the instant case, and it is significant that *each* of these decisions upheld the applicability of county land use laws on Indian reservations under Public Law 280.[4] Moreover, another

4. In *Rincon Band v. County of San Diego,* 324 F.Supp. 371 (S.D. Cal. 1971), the court held that Indian trust property is subject to a county's anti-gambling ordinances. In *Agua Caliente*

panel of the Ninth Circuit recently observed, in dictum, that Congress, in passing Public Law 280, "may have 'intended to grant to the state the full exercise of the police power,' and thus the ability to enforce, e.g., zoning ordinances or gambling ordinances . . . ." *Capitan Grande Band v. Helix Irrig. Dist.*, 514 F.2d 465, 468 (9th Cir. 1975). Additionally, the instant decision rests principally on its conclusion in favor of the validity of a regulation issued by the Secretary of the Interior in 1965, 25 C.F.R. §1.4, a regulation which revokes the States' limited authority to apply their land use laws on Indian reservations under Public Law

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Band v. City of Palm Springs, 347 F.Supp. 42 (C.D. Cal. 1972), the court held that such property is subject to a county's zoning ordinances. In *Madrigal v. County of Riverside*, No. 70-1893-EC (C.D. Cal. 1971), the court held that such property is subject to a county's ordinances limiting the performance of "rock" festivals. In *Ricci v. County of Riverside*, No. 71-1134-EC (C.D. Cal. 1972), the court held that such property is subject to a county's building ordinances.

The *Rincon Band*, *Madrigal* and *Ricci* cases were dismissed by the Ninth Circuit on grounds of mootness. See 495 F.2d 1 (9th Cir. 1974), *cert. denied* 419 U.S. 1008 (1974). The *Agua Caliente* was dismissed for the same reason, in an unpublished order of January 24, 1975.

The issue in this case is also raised in *United States v. Humboldt County and State of California*, No. C-74-2526 RFP (N.D. Cal.), currently pending before a federal district court in California. The court in that case recently announced its intention, shortly after the decision of the Ninth Circuit in the instant case became final, to enjoin the State and the county from applying various State and county land use laws on the Indian reservation in that case.

Finally, the issue in this case was also raised in *Snohomish County v. Seattle Disposal Co.*, 70 Wash. 668, 425 P.2d 22, 25 (1967), *cert. denied* 389 U.S. 1016 (1967), where the Washington Supreme Court ruled, in a split decision, that county zoning ordinances are inapplicable on Indian reservations under Public Law 280.

The United States, in amicus briefs submitted to the Ninth Circuit in the *Rincon Band*, *Agua Caliente* and *Ricci* cases, urged the views which formed the basis of the Ninth Circuit's decision in the instant case. For the Court's convenience, we are lodging copies of the United States' three amicus briefs with the Clerk of this Court.

280; however, every federal court which has considered this question prior to the instant case has ruled that the regulation is invalid, to the extent that it revokes the authority of a State to apply its land use laws on Indian reservations. See p. 26, *infra*. Thus, the instant decision represents an abrupt departure from the direction taken by federal courts in resolving the issue in this litigation. The inconsistency between the instant decision and those of the other federal courts—whose obligation to protect Indian rights is no less than that of the Ninth Circuit here—warrants, we believe, a critical examination of the decision by this Court.

The Ninth Circuit's decision is also inconsistent with a recent decision of a California appellate court in *People v. Rhoades*, 12 Cal.App.3d 720, 90 Cal. Rptr. 794 (1970), *cert. denied* 404 U.S. 823 (1971). There, an action was brought against an Indian who, in building a house on an Indian reservation in the midst of valuable forest lands, refused to comply with a State land use law requiring a firebreak to be built around his house; the purpose of the State law is to protect the surrounding forest lands from destruction by fire. The court held that, under Public Law 280, the Indian must comply with the State firebreak law. Thus, the decision of the California appellate court is directly contrary to the decision in this case. The instant decision would apparently allow the Indian to build his house without complying with the State's firebreak law, and thus prevent California from insuring the protection of its valuable forest areas. Further, a lower State court in California may be required, in a future case, to follow the precedent of its own appellate court, rather than that of a federal appellate court. See, *e.g.*, *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 369 P.2d 937 (1962).

Thus, the need to resolve the conflict between these appellate decisions strengthens, we believe, the need for this Court to review the Ninth Circuit's decision.

We now turn to the merits of the controversy.

II. Merits of the Case

Federal Indian law has steadily evolved from the time that Justice Marshall ruled, in *Worcester v. Georgia,* 6 Pet. (32 U.S.) 515 (1832), that Indian reservations are distinct nations which are beyond the reach of the laws of the surrounding States. Indian reservations are now regarded, within limits which are still being worked out by this Court, as subject to State laws that do not conflict with federal laws, and to a lesser degree with tribal self-government. Compare *Organized Village of Kake v. Egan,* 369 U.S. 60, 67-68, 71-75 (1962), *Williams v. Lee,* 358 U.S. 217, 220-221 (1959), *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973), with *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164 (1973). However, this judicial history is largely inapplicable in this case, for this case involves the interpretation of a federal statute, Public Law 280, which transfers civil and criminal jurisdiction over Indian reservations in certain States to the States themselves. Thus, this case presents the interpretation of a singular federal statute giving certain States broad control over Indian affairs, not an application of the common law principle that the States, at most, have very limited control over Indian affairs.

In passing Public Law 280, Congress recognized that Indian tribes in certain States, including California, had progressed to the point that their members should be assimilated, within limits, into the society and world beyond the reservation.[5] The House and Senate reports explaining the act made this clear, stating:

> "This legislation . . . has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such." S. Rep. No. 699 (incorporating H.R. Rep. No. 848), 83d Cong., 1st Sess. 3 (1953).[6]

Congress has not taken the next step and terminated the Indian reservations in these States, or dismantled the BIA's operations in these States; indeed, California requested that Congress not take this step. Cal. Sen. J. Res. No. 4 (1954). But neither has Congress taken a step backward and revoked the jurisdiction of those States under Public Law 280. Thus, current congressional policy provides for limited, but not absolute, assimilation of Indians in States affected by Public Law 280.

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5. As the court stated in *United States v. Brown*, 334 F.Supp. 536 (D. Neb. 1971), in explaining Public Law 280:
> "The action of Congress in placing jurisdiction over Indians in the hands of the states had as its purpose the elimination of the legal impediments standing in the way of the Indian becoming a first class citizen. Congress apparently assumed that subjecting the Indian to equality of the responsibilities of state law would make him equal in all respects to other citizens of the State."

6. Public Law 280 should be read *in pari materia* with House Concurrent Resolution No. 108, issued two weeks before the passage of Public Law 280, which stated:
> "Whereas it is the policy of Congress, as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States . . . .
>
> "That it is declared to be the sense of Congress that, at the earliest possible time, all the Indian tribes and the individual members thereof located with the State of California, ... should be free from Federal supervision and control and from all disabilities and limitations specially applicable to Indians . . . ." 67 Stat. B 132 (1953).

Public Law 280 was passed only after the affected tribes and the affected States were consulted, and had agreed to the transfer of jurisdiction to the States. S. Rep. No. 699, 83d Cong., 1st Sess. 5-6 (1953). Tribes which objected to the transfer of jurisdiction were exempted from the jurisdiction given to the States, and States which felt incapable of administering and enforcing their civil and criminal laws on Indian reservations were not given such jurisdiction at all. *Ibid.* None of California's Indian tribes objected to the transfer of jurisdiction, and thus all such tribes are included in the jurisdiction given to California. *Ibid.*[7]

Before turning to the language of Public Law 280, it may be helpful to briefly describe the Ninth Circuit's general approach to this case. First, the court largely resolved the issues in this case under the canon of construction that requires ambiguities in federal Indian statutes to be resolved favorably to the Indians. See, *e.g., Antoine v. Washington,* 420 U.S. 194, 199-200 (1975). In order to invoke this canon of construction, the court found that the language of Public Law 280 is "ambiguous" in almost every respect. App. 7-8, 23. As we shall see, however, this language is eminently clear, if given its simple, plain meaning. In fact, another panel of the Ninth Circuit has emphasized that the language of this act is "unambiguous." *Anderson v. Gladden,* 293 F.2d 463, 466 (9th Cir. 1961). Moreover, as we shall see, the court in this case continually failed to examine the act's legislative history to clarify the language which it found to be "ambiguous," apparently assuming that it was relieved from this responsibility by the canon of

7. Congress enacted a law in 1968 to insure that tribes in other States will also be consulted, and their consent obtained, before such States are authorized to receive civil and criminal jurisdiction over Indian reservations. 25 U.S.C. § 1321, 1322.

construction applicable to ambiguous Indian statutes. See pp. 17-19, 23-24, 38-39, *infra.* Even worse, the court resolved some of these "ambiguities" in a way that makes Public Law 280 internally inconsistent. See pp. 30-31, *infra.* In effect, the court brushed aside the interpretative aids that require a statute to be interpreted consistently with its legislative history, and not inconsistently with its internal parts. It used the canon of construction as a substitute for, rather than a supplement to, these aids, thus achieving a result that bears no relationship to what Congress intended to accomplish in passing Public Law 280. As this Court recently declared in *DeCoteau v. District Court,* 420 U.S. 425, 449 (1975):

> "A canon of construction [requiring ambiguous statutes to be interpreted favorably to Indians] is not a license to disregard clear expressions of tribal and congressional intent. . . . Some might wish they had spoken differently, but we cannot remake history."

Second, the Ninth Circuit stated that Congress "has now rejected" and "discarded" the policy underlying Public Law 280. App. 13. It is, we submit, presumptuous for a court to conclude that Congress has "rejected" a policy underlying a statute still in full force and effect, a statute which has withstood efforts at repeal. See, *e.g.,* S. 1328, 94th Cong., 1st Sess. (1975). The only authority cited by the court shows, as we mentioned above, that Congress has not taken the additional step of *terminating* Indian reservations, a step which would dismantle the BIA's supervision of Indians and provide for *absolute* assimilation of Indians with other social groups.[8] It can hardly be thus

8. The court cited a statement by former President Nixon indicating that his administration no longer advocated the termination of Indian reservations, a recent congressional act that authorizes financing of the development of Indian tribes, 25 U.S.C. § 1451, and a recent congressional act that requires tribes in a particular

concluded that Congress has abandoned the policy of Public Law 280, which *preserves* existing reservations, continues limited supervision of Indians by the BIA and—by providing for State civil and criminal jurisdiction over Indian reservations—provides for *limited* assimilation of Indians. The fact that Congress has not established the first policy hardly justifies the conclusion that Congress has abandoned the second. The court's conclusion to the contrary is based on a confusion between these different congressional policies. Since Congress has not repealed Public Law 280, it evidently believes that Public Law 280 continues to serve a useful purpose in those States, such as California, where Indians "have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction" to Indian reservations. S. Rep. No. 699 (incorporating H.R. Rep. No. 848), 83d Cong., 1st Sess. 5 (1953). Accordingly, the court was clearly wrong in suggesting that Congress has "rejected" the policy underlying Public Law 280.

Even more disturbing, however, is the clear inference that the court, in interpreting Public Law 280, was largely influenced by its view that Congress has "rejected" the policy underlying that law. No citation is necessary, we believe, that a statute must be interpreted in light of Congress' intent at the time that the statute was enacted, not in light of judicial speculation, wholly erroneous in this case, about what Congress thinks about the statute today. If Congress wishes to change the policy underlying that law, it has an obvious legislative remedy at its disposal; its failure to

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State to give their consent before that State can assume civil and criminal jurisdiction over Indian reservations, 25 U.S.C. §§ 1311-1312, 1321-1326. App. 11-12n.7, 15 n.12. None of these citations, of course, indicate a congressional rejection of the policy underlying Public Law 280.

exercise that remedy clearly indicates that it has not changed its policy. It is entirely improper for a court, by a misguided application of the canon of construction applicable to ambiguous Indian statutes, to effectively change that policy on the unfounded pretext that Congress would legislate differently today.

A. "CIVIL LAWS OF SUCH STATE."

Public Law 280 provides, in relevant part:

> "(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and *those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:* . . .
>
> "(b) Nothing in this section shall authorize the alienation, *encumbrance,* or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize *regulation of the use* of such property in a manner inconsistent with any *Federal treaty, agreement, or statute or with any regulation made pursuant thereto;* or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.
>
> "(c) Any *tribal ordinance or custom* heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may

possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." 28 U.S.C. § 1360. (Emphasis added.)[9]

Thus, subdivision (a) provides that "State" laws of "general application to private persons and private property" are applicable on Indian reservations, subdivision (b) provides an exception for certain types of Indian trust property, and subdivision (c) authorizes tribes to adopt laws and customs not inconsistent with State law.

The Ninth Circuit held that subdivision (a) of Public Law 280, in subjecting Indian reservations to "those civil laws of such State . . . that are of general application to private persons or private property," is "ambiguous." App. 8. Under the usual canon of construction, the court ruled that the statutory reference must be construed to exclude the application of "county" laws, as opposed to "State" laws, on Indian reservations. *Ibid.*

There is, we submit, nothing ambiguous about the statutory reference. It is well known that counties are political subdivisions of the State. Cal. Const., Art. XI, § 1; *County of Los Angeles v. Riley,* 6 Cal.2d 621, 627, 59 P.2d 139, 141 (1936); *Griffin v. Colusa County,* 44 Cal. App.2d 915, 920, 113 P.2d 270, 273 (1941).[10] Their authority to pass laws is

9. The above-quoted portion of Public Law 280 relates to the civil jurisdiction transferred to the States under that law. The criminal jurisdiction transferred under that law is codified at 18 U.S.C. § 1162.

10. The Court stated in *County of Los Angeles v. Riley, supra:* "Counties are not municipal corporations, but are political subdivisions of the state for purposes of government. With certain exceptions, the powers and functions of the counties have a direct and exclusive reference to the general policy of the state and are, in fact, but a branch of the general administration of that policy. Counties are vested by the state with a variety of powers, which the state itself may assume or resume and directly exercise." 6 Cal.2d at 627; 59 P.2d at 141.

derived from, and delegated to them under, the State's legislative power. *In re Isch,* 174 Cal. 180, 162 Pac. 1026 (1917); *City of Bakersfield v. Miller,* 64 Cal.2d 93, 410 P.2d 393 (1966); *Freeman v. Contra Costa County Water Dist.,* 18 Cal. App.3d 404, 95 Cal. Rptr. 852 (1971). Their laws are part of the body of State law. *County of Plumas v. Wheeler,* 149 Cal. 758, 87 Pac. 909 (1906); *City of San Luis Obispo v. Fitzgerald,* 126 Cal. 279, 281, 58 Pac. 699 (1899).[11] Thus, Public Law 280, in making reference to the laws of the "State," was obviously not intended to exclude the laws of its political subdivisions.[12] The Ninth Circuit, by claiming to perceive an ambiguity that does not exist, has reached a result that defies the simple, common sense meaning intended by Congress.

Moreover, if the court believed that the statute is ambiguous on its face, it could easily have resolved the ambiguity by referring to the act's legislative history. The court, however, totally ignored this history.[13] This history

11. According to section 2b of the Restatement of Conflicts: "The body of law of a state is not necessarily applicable equally to all persons or places within the state. Thus, different classes of persons or different localities may be governed by different laws, or local subdivisions of the state may be allowed by the state to make laws applicable in some particulars within their own boundaries. All such laws, however, form a portion of the laws of the state."

12. The limiting phrase in subdivision (a) of Public Law 280, subjecting Indians only to laws of "general application to private persons or private property," is obviously intended to assure that the law in question, whether passed by the State's Legislature or by the county's board of supervisors, is applicable to Indians and non-Indians on the same terms, and thus seeks to prevent the State and its political subdivisions from passing laws that discriminate, or even potentially discriminate, against Indians.

13. The Ninth Circuit generally alluded to other references in the legislative history indicating that the act was intended to assimilate Indians and non-Indians, and the court stated that these references were not sufficiently clear to establish an intent to subject

shows beyond doubt that no distinction was intended between "State" and "county" laws. The Senate and House reports accompanying Public Law 280 noted that the BIA had contacted "State and *local authorities*" in the affected States, most of whom had indicated their willingness to accept the proposed transfer of jurisdiction. S. Rep. No. 699 (incorporating H.R. Rep. No. 848), 83d Cong., 1st Sess. 5 (1953). (Emphasis added.) The reports further noted that Nevada was not given jurisdiction under the bill, because "authorities of some *counties* have indicated their willingness to accept jurisdiction, others opposed it, and still others stated they would accept such jurisdiction only with an accompanying Federal subsidy." *Id.* at 6. (Emphasis added.) Appended to the reports was a letter from the Assistant Secretary of the Interior to the chairman of the House Committee on Interior and Insular Affairs; the letter confirmed that the BIA had consulted with "State and *local authorities*" in the affected States, that "State and *local authorities*" were agreeable to the proposed transfer of jurisdiction, that "some of the *counties*" in Nevada were opposed to the transfer of jurisdiction, and that the BIA had not consulted with "State and *local authorities*" in States other than those specifically mentioned. *Id.* at 6-7. (Emphasis added.) Finally, the reports noted that the bill was consistent with pending federal legislation which would transfer responsibility for certain Indian health and welfare programs to a "State, *county, or municipal subdivision* . . . ." *Id.* at 4. (Emphasis added.) Thus, the act's legislative history unequivocally shows that the act was intended to subject Indians to the laws of the States political subdivisions, and the Ninth Circuit was able to reach the opposite result only by totally ignoring this history.

Indians to county laws. App. 9-10. Whether or not these references are thus lacking in clarity, the fact remains that the court wholly ignored *other* references in the act's legislative history, cited in the text above, which clearly indicate an intent to subject Indians to county laws.

Moreover, a distinction between "State" and "county" laws is wholly unrealistic and unworkable. Counties play a vital, indispensable role in administering and enforcing laws enacted by the State's Legislature, and thus are, in a real and practical sense, an administrative arm of the Legislature. For example, following the congressional example of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347, California enacted a major environmental land use law, the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §§ 21000-21176. *Friends of Mammoth v. Board of Supervisors,* 8 Cal.3d 247, 502 P.2d 1049 (1972). Under CEQA, counties are required to prepare and consider environmental impact reports, pursuant to criteria spelled out in the act, before approving any land use that may have a significant effect on the environment; the Ninth Circuit, by ruling that the plaintiffs need not pay fees to defer part of the county's expenses in preparing and considering such reports, apparently ruled that CEQA is not applicable to the plaintiffs, even though that act was passed by the State's Legislature.

Another law passed by the State's Legislature requires counties to administer and enforce State regulations imposing minimum safety and sanitation standards for certain physical structures, including mobile homes. Cal. Health & Saf. Code §§ 17910-17995, 18000-18080. It was pursuant to this act that Kings County passed the building ordinance which the court held inapplicable to the plaintiffs' mobile homes. Another State law requires counties to adopt general plans for the use of land, pursuant to criteria

spelled out in the act, and to adopt zoning ordinances implementing such plans. Cal. Govt. Code §§ 65100-65700, 65800-65907. It was pursuant to these acts that Kings County adopted the zoning regulations that the court held inapplicable to the plaintiffs' mobile homes.

Thus, the various county ordinances in this case were not adopted pursuant to any inherent, sovereign powers retained by the counties. Rather, they were adopted pursuant to directives of the State's Legislature, directives which spell out specific criteria which the counties must follow in administering the State law. Thus, there is no workable distinction between the laws of a State and those of its counties. The Ninth Circuit, under the guise of prohibiting the application of "county" laws on Indian reservations, has effectively prevented the State Legislature from utilizing counties to administer and enforce its own "State" laws. In this way, the court, although disclaiming an intention to prohibit the application of "State" laws on Indian reservations, has achieved the very result which it disclaimed.

Moreover, the Ninth Circuit's distinction would apparently also preclude California's many *regional* agencies from exercising jurisdiction over Indian reservations. Regional agencies, for example, administer (1) the State's water quality laws, which require waste dischargers to secure permits from regional water quality control boards, Cal. Wat. Code §§ 13000-13442, (2) the State's air quality laws, which require air polluters to obtain permits from air pollution control districts, Cal. Health & Saf. Code §§ 42300-42313, and (3) the State's coastal laws, which require those who build projects in the State's coastal area to obtain permits from regional coastal commissions, Cal. Pub. Res. Code §§ 27000-27650. Some of these agencies,

such as the air agencies, exercise jurisdiction only over a single county, and other agencies, such as water agencies, exercise jurisdiction over many counties. *Ibid.*[14] It is unclear whether these regional agencies are classifiable as "State" or "county" agencies for purposes of the Ninth Circuit's decision, since their jurisdiction falls somewhere in between that of "State" and "county" agencies. Since the jurisdiction of *each* such agency does not extend throughout the State, the Ninth Circuit's decision would probably preclude such agencies from exercising jurisdiction over Indian reservations. If so, the Ninth Circuit's decision would prevent these agencies from applying "State" laws on such reservations, and thus again achieve a result which the court disclaimed.

In summary, the Ninth Circuit's decision reflects little awareness of the vital role played by counties and regional agencies in the administration of California law. The court obviously assumed that the jurisdiction of the State and its political subdivisions can be easily differentiated, an assumption which does not accord with reality. The fact that the State's Legislature, for reasons of efficiency, economy and convenience, entrusts counties with the administration of certain of its laws, rather than creates new bureaucracies for that purpose, is hardly relevant in determining whether the Legislature's laws should be applicable on Indian reservations. Moreover, the fact that the Legislature in other instances creates new bureaucracies for that purpose, but gives them regional rather than Statewide jurisdiction, is similarly irrelevant. The Legislature's laws are the "civil laws of such State," within the meaning

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14. Some of these county-wide air agencies have been consolidate, thus resulting in the creation of agencies with jurisdiction over many counties. See Cal. Health & Saf. Code §§ 40300-40392, 40200-40276.

of Public Law 280, whether they are administered by counties, regional agencies or agencies with Statewide jurisdiction. Thus, the distinction suggested by the Ninth Circuit is hopelessly unrealistic and unworkable, which is undoubtedly the reason that the distinction never even occurred to Congress in passing Public Law 280.[15]

B. "REGULATION OF THE USE" OF INDIAN TRUST PROPERTY.

1. Limited Applicability of State Land Use Laws.

Public Law 280 provides that the State may not impose a "regulation of the use" of Indian trust property that conflicts with a federal "treaty, agreement, or statute or with any regulation made pursuant thereto." 28 U.S.C. § 1360(b). This provision thus authorizes a "regulation of the use" of

15. In distinguishing between "State" and "county" laws, the court relied on the principle that the inherent "sovereignty" of Indian tribes, although insufficient in itself to justify the exclusion of State or county laws on Indian reservations, provides an historical backdrop which supports the conclusion that applicable federal law should be so construed. App. 13-16. Compare *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164 (1973), with *Organized Village of Kake v. Egan,* 369 U.S. 60, 67-68, 71-75 (1962). However, the principle of tribal sovereignty is of no help in interpreting Public Law 280, for subdivision (c) thereof clearly subordinates tribal laws and customs to conflicting State laws. 28 U.S.C. § 1360 (c). Indeed, since the objective of Public Law 280 is to promote the limited assimilation of Indians, that objective would be frustrated if the tribes were permitted to adopt laws or pursue customs that conflict with laws applicable to others.

Moreover, the principle of tribal sovereignty has only been invoked to support the exclusion of *State* laws on Indian reservations, where States have not received jurisdiction over such reservations under Public Law 280. See, *e.g., McClanahan v. Arizona State Tax Comm'n, supra.* That principle has never been applied, and would not seem applicable, to exclude the application of *county* laws on Indian reservations, where, as in States which have received jurisdiction under Public Law 280, there is otherwise no question concerning the applicability of *State* laws. In particular, the principle can hardly be invoked, as it has been invoked by the Ninth Circuit, to preclude the application of State laws administered by counties, where the court concedes that State laws are otherwise applicable.

such property, to the extent not inconsistent with specified federal laws. State land use laws, such as county zoning and building ordinances, are of course a form of the "regulation of the use" of property. Thus, Public Law 280 clearly authorizes the application of State land use laws to Indian trust property, to the extent not inconsistent with specified federal laws.

The legislative history of Public Law 280 clearly indicates that Congress consciously chose to authorize limited State land use regulation of Indian trust property. H.R. 1063, the bill which eventually was enacted as Public Law 280, originally provided:

> "[*N*]*othing in this section shall authorize the* alienation, encumbrance, or taxation of such [Indian trust] property or the adjudication or *regulation of its use* . . . ." 99 Cong. Rec. 9962, 83d Cong., 1st Sess. (1953). (Emphasis added.)

A similar provision had been contained in an earlier bill, H.R. 3624, which was introduced in Congress in 1951. H.R. 3624, 82d Cong., 1st Sess. (1951). Originally, the latter bill contained no language prohibiting the "regulation of its [Indian trust property] use." "State Legal Jurisdiction in Indian Country," *Hearings before the Subcommittee on Indian Affairs of the Interior and Insular Affairs Committee of the House of Representatives,* 82d Cong., 2d Sess., ser. 11, at 28-29 (1952). Such language was inserted in the earlier bill, however, at the request of the U. S. Department of the Interior. *Ibid.* The Department stated that, as a result of the additional language:

> "The State courts could not take any action that would affect the status of this [trust] property in any way or deprive any Indians of any of the benefits therefrom." *Ibid.*

Thus, the language suggested by the Department, which found its way into H.R. 1063, would have prohibited State regulation of the use of Indian trust property under *any* circumstances. However, H.R. 1063 was amended to prohibit such regulation only to the extent inconsistent with a federal treaty, agreement, statute or regulation. Thus, the amended bill, which became law, clearly authorized *limited* State regulation of the use of such property.[16]

16. In thus providing for limited State regulation of the use of Indian trust property, Public Law 280 evidently sought to avoid creating a checkerboard pattern of land use controls on Indian reservations, except to the extent that this result is necessitated by federal treaties, agreements, statutes or regulations. On many reservations, particularly in California, much reservation land is owned by surrounding non-Indian urban communities, or otherwise owned and occupied by non-Indian landowners; this result derives from the effect of the General Allotment Act of 1887, 24 Stat. 388, which allowed non-Indian settlers to acquire "surplus" lands on certain reservations. See, *e.g.*, H.R. Rep. No. 956, 81st Cong., 1st Sess. (1949); *Mattz v. Arnett*, 412 U.S. 481 (1973). The State's land use laws are clearly applicable on reservation lands owned by non-Indian communities and individuals. Cf. *United States v. McBratney*, 104 U.S. 621 (1881); *Draper v. United States*, 164 U.S. 240 (1896). Therefore, Congress intended to make such laws applicable on other reservation lands under Public Law 280, in order to insure uniformity of land use controls to the extent compatible with Indian rights based on clearly-defined federal laws. Otherwise, an Indian allottee would be allowed to develop his land in a random, haphazard manner without complying with the land use laws applicable to adjoining lands owned by his non-Indian neighbor. In fact, Public Law 280 was modeled after Public Law 322, an act which provided that the lands of the Agua Caliente Indian Reservation in California "shall be subject to the laws, civil and criminal, of the State of California . . . ." 63 Stat. 705 (1951) The latter act was enacted, according to its House report, in response to a "unique problem" resulting from the fact that Indian lands are "intermingled in a *checkerboard pattern* with highly developed urban land of great value." H.R. Rep. No. 956, 81st Cong., 1st Sess. 2 (1949). (Emphasis added.) Accordingly, the act's author stated:

> "[T]his section of the bill is for the purpose of conferring jurisdiction over the police, fire, and sanitary regulations, and so on, upon the State of California" *Hearings on H.R. 4616 Before the Subcommittee on Indian Affairs of the Committee on Public Lands*, 81st Cong., 1st Sess., ser. 16 (1949).

2. The Secretary's "Regulation".

The Ninth Circuit held that the county's land use ordinances are inconsistent with a "regulation" validly adopted by the Secretary of the Interior in 1965, 25 C.F.R. § 1.4. App. 18-22, 31-32. The regulation prohibits "a State or its political subdivisions" from "limiting, zoning or otherwise governing, regulating or controlling the use or development" of Indian trust property which is "leased from or held or used under agreement with and belonging to" any Indian or tribe. *Ibid.*

The Secretary's regulation is clearly invalid, at least to the extent that it is applicable in States which have received jurisdiction over Indian reservations under Public Law 280.[17] As we have noted, that statute authorizes the States to impose a "regulation of the use" of Indian trust property, to the extent not inconsistent with a federal treaty, agreement, statute or regulation. However, the Secretary's regulation totally precludes the States and their political subdivisions from "regulating . . . the use" of such property, even if the regulation is not inconsistent with these designated federal laws.[18] Thus, the regulation seeks to revoke the limited authority given to the States and their political subdivisions under Public Law 280. If the regulation had been issued *prior* to the passage of that act, it might be argued that the act, in precluding the States from regulating Indian trust property inconsistently with a federal "regulation," was intended to incorporate the Secretary's absolute prohibition of such State regulatory efforts. However, the

17. The court failed to consider whether the regulation was meant to be applied only to States which have not received jurisdiction over Indian reservations under Public Law 280.

18. The Secretary subsequently authorized by regulation the application of "State" land use laws, but not "local" land use laws, on Indian reservations. 30 Fed. Reg. 8722 (July 2, 1965).

regulation was issued in 1965, *after* the passage of Public Law 280. Obviously the act does not authorize the Secretary to unilaterally revoke the limited jurisdiction which the act gives to the States and their political subdivisions. It thus follows that the Secretary, in seeking to revoke such jurisdiction, has exceeded his authority under the act. Cf. *Organized Village of Kake v. Egan,* 369 U.S. 60, 63 (1962); *Hynes v. Grimes Packing Co.,* 337 U.S. 86 (1949). Accordingly, two federal district courts have held that the regulation is invalid. *Rincon Band v. County of San Diego,* 324 F. Supp. 371, 377-378 (S.D. Cal. 1971), *dismissed as moot* 495 F.2d 1 (9th Cir. 1974); *Norvell v. Sangre de Cristo Development Co., Inc.,* 372 F.Supp. 348 (D. N. Mex. 1974).[19]

The Ninth Circuit held, however, that the regulation is not invalid, because it was issued pursuant to a provision in the Indian Reorganization Act of 1934, 48 Stat. 985, a provision authorizing the Secretary to acquire lands "for the purpose of providing land for Indians," 25 U.S.C. § 465. App. 20-22, 33. However, this conclusion ignores the fact

19. The validity of the regulation has been upheld in two other cases, but not as applied to prohibit a county from applying its laws on Indian reservations under Public Law 280. In *County of San Bernardino v. LaMar,* 271 Cal. App.2d 718, 76 Cal. Rptr. 547 (1969), the regulation, as amended to authorize the application of "State" land use laws on Indian reservations, see n. 18, *supra,* was held to *authorize* a county in California to apply the provisions of a State law, the Mobilehome Parks Act, Cal. Health & Saf. Code §§ 18200-18220, to a lessee of Indian trust property. In *Sangre de Cristo Development Corp. v. City of Santa Fe,* 84 N.M. 343, 503 P.2d 323 (1972), the validity of the regulation was upheld as applied to a State, New Mexico, which has not received jurisdiction under Public Law 280. To our knowledge, the only courts which have heretofore considered the validity of the regulation, as applied to prohibit a county from applying its land use laws on Indian reservations under Public Law 280, are those cited in the text, and those courts held that the regulation as so applied is invalid.

that the regulation, according to its preamble, was merely intended to *interpret* federal law; it was not intended to *effectuate* federal law, in a quasi-legislative sense, by adding to the body of federal law.[20] Thus, the regulation has no greater force or effect than the statute which it interprets. Certainly the provision in the 1934 act cited by the court does not, in itself, prohibit the application of State land use laws on Indian reservations. The provision merely authorizes the Secretary to acquire lands for Indians, and does not limit the application of State land use laws on such lands.[21] Therefore, the regulation improperly interprets the 1934 provision, and is thus invalid.[22]

Even if we assume *arguendo* that the regulation was intended to effectuate the provision in the 1934 act, rather

20. The regulation's preamble stated that its purpose was merely to "enunciate and particularize . . . the sense of existing law." 30 Fed. Reg. 6438 (May 8, 1965). See App. 31.

The distinction between interpretative and quasi-legislative regulations was spelled out by the U S. Attorney General, as follows:

> "Administrative rule-making, in any event, includes the formulation of both legally binding regulations and interpretative regulations. The former receive statutory force upon going into effect. The latter do not receive statutory force and their validity is subject to challenge in any court proceeding in which their application may be in question. The statutes themselves and not the regulations remain in theory the sole criterion of what the law authorizes or compels and what it forbids . . . ." Final Report of Attorney General's Committee on Administrative Procedures, 100 (1941).

21. In fact, since the provision expressly provides that "such lands or rights shall be exempt from State and local taxation," 25 U.S.C. § 465, it infers that all other State and local laws are applicable on such lands.

22. If the regulation was intended to interpret the effect of Public Law 280, it is equally invalid. As we have noted, Public Law 280 only prohibits the application of State land use laws on Indian reservations that are inconsistent with federal treaties, agreements, statutes or regulations.

than to interpret that or other provisions of law, the regulation is still invalid. The Secretary's power to issue regulations to effectuate federal Indian statutes is found in 25 U.S.C. §§ 2 and 9, which authorize the President to prescribe regulations for effectuating statutes "relating to Indian affairs," to settle accounts of "Indian affairs," and concerning "the management of all Indian affairs and matters arising out of Indian relations." This Court has squarely held that the Secretary's authority under these sections is merely to "implement *specific* laws," and to manage "relations between the United States and the Indians—*not a general power to make rules governing Indian conduct.*" *Organized Village of Kake v. Egan,* 369 U.S. 60, 63 (1962). (Emphasis added.) Accord, *Hynes v. Grimes Packing Co.,* 337 U.S. 86 (1949). In the *Kake Village* and *Hynes* cases, the Court voided regulations issued by the Secretary limiting the effect of State laws as applied to Indians, on grounds that Congress had not indicated by "specific and unambiguous legislation" that the Secretary had such authority. *Hynes v. Grimes Packing Co., supra* at 105. Since the provision in the 1934 act does not specifically, or even inferentially, authorize the Secretary to limit the effect of State land use laws on Indian reservations, the Secretary has exceeded his authority in issuing the regulation, just as he exceeded his authority in issuing the regulations in the *Kake Village* and *Hynes* cases. Since the provision in the 1934 act does not in itself conflict with State land use laws, the Secretary may not create such a conflict pursuant to his power to issue regulations. Accordingly, the regulation, even if intended to effectuate the 1934 act, is invalid.

Further, even if we assume *arguendo* that the provision in the 1934 act might have otherwise authorized the issuance of the Secretary's regulation, his authority to issue the regulation was revoked by the passage of Public Law 280 in 1953, prior to the time that the regulation was issued. The latter act, as we have seen, authorizes the States to apply their land use laws on Indian reservations, to the extent not inconsistent with certain federal laws. Therefore, the Secretary lacked authority to prohibit the application of such State laws after the passage of Public Law 280, whether or not he had such authority before.

To overcome the latter conclusion, the Ninth Circuit ruled that Public Law 280 did *not* revoke the Secretary's authority to issue the regulation, because Public Law 280, in precluding the States from applying an "encumbrance" against Indian trust property, *independently* prohibits the States from regulating the use of such property. App. 23-25. We will show, in the next portion of this petition, that the "encumbrance" exception cannot be so construed, for otherwise that exception would be inconsistent with the provision authorizing the States to "regulate the use" of such property under limited circumstances. For the moment, however, we note only that, if the Secretary's regulation can only be sustained because Public Law 280 *independently* prohibits the States from regulating such property, the prohibition derives directly from the statute, not from the regulation. In that event, the regulation adds nothing to existing law, and thus has no significance in this case.

Thus, the logic employed by the court is strange indeed. To avoid the conclusion that the regulation is invalid under Public Law 280, the court concludes that the regulation was authorized by the 1934 act; however, to avoid the conclusion that this authority was revoked by the subsequent passage of Public Law 280, the court concludes that the

regulation is independently authorized by the latter act. Thus, the court's reasoning is internally inconsistent. Either the Secretary has authority to issue the regulation under Public Law 280, or he does not. If he has such authority, the States may not regulate the use of Indian trust property because of the force of the statute itself, not because of the force of the regulation. If he lacks such authority, he may not nullify the States' limited authority under that act to regulate such property, whether or not his regulation can be rationalized as having been issued under the 1934 act. Thus, either the regulation is irrelevant—in that it adds nothing to existing federal law—or it is invalid. Either way, it has no significance here. The court's decision can only be sustained if Public Law 280, in precluding the application of a State "encumbrance" on Indian trust property, independently prohibits the States from regulating such property, a question which we shall now examine.

C. "ENCUMBRANCE" OF INDIAN TRUST PROPERTY.

Public Law 280 precludes a State from imposing an "encumbrance" on Indian trust property. 28 U.S.C. § 1360 (b). The Ninth Circuit concluded that the meaning of this word "is of course ambiguous," and thus, under the usual canon of construction, should be construed as including county land use restrictions. App. 23-24.

However, the court's conclusion is patently inconsistent with other language in Public Law 280. As noted earlier, the act expressly excepts Indian trust property from a State "*regulation* of the *use*" of such property, if the regulation is inconsistent with a federal treaty, agreement, statute or regulation. (Emphasis added.) Thus, this exception clearly authorizes State "regulation of the use" of such property, such as county land use restrictions, under circumstances

spelled out in the act. However, if the "encumbrance" exception is construed as including a "regulation of the use" of such property, the "encumbrance" exception would totally preclude the "regulation of the use" of such property under *any* circumstances. Under this construction, the two exceptions would be in conflict. The "encumbrance" exception would absolutely prohibit the State regulation, and the "regulation" exception would authorize the State regulation under limited circumstances. Thus, the one exception would prohibit that which the other exception, under limited circumstances, permits. The canon of construction favored by the Ninth Circuit is not a substitute for the normal rule of statutory construction that requires the various parts of a statute to be construed harmoniously. See, *e.g., Schneiderman v. United States,* 320 U.S. 118 (1943). Hence, the "encumbrance" exception clearly does not apply to State laws, such as county land use restrictions, that regulate the use of Indian trust property. This conclusion has been embraced by *every* court in California, both a federal and State levels, which has considered this question prior to the instant case. See *Rincon Band v. County of San Diego,* 324 F.Supp. 371, 376-377 (S.D. Cal. 1971), *dismissed as moot* 495 F.2d 1 (9th Cir. 1974); *Agua Caliente Band v. City of Palm Springs,* 347 F.Supp. 42, 49-50 (C.D. Cal. 1972), *dismissed as moot* (9th Cir., unpublished order of Jan. 24, 1975); *People v. Rhodes,* 12 Cal.App.3d 720, 90 Cal. Rptr. 794 (1970); *Madrigal v. County of Riverside,* No. 70-1893-EC (C.D. Cal), *dismissed as moot* 495 F.2d 1 (1974); *Ricci v. County of Riverside,* No. 71-1134-EC (C.D. Cal. 1972), *dismissed as moot* 495 F.2d 1 (9th Cir. 1974).

The Ninth Circuit tried to sustain its result by stating, with absolutely no reference whatsover, that the "encum-

brance" exception applies to Indian *property*, and the "regulation" exception applies to Indian *activity* which only incidentally affects property. App. 24-25 nn. 19, 20. But this distinction is wholly inconsistent with the language of the statute. According to the statute, *both* the "encumbrance" and "regulation" exceptions, which are part of the same savings clause, apply to the *same* subject matter, *i.e.* to "real or personal *property* . . . belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States." 28 U.S.C. § 1360(b). (Emphasis added.) Therefore, both exceptions apply equally to *property*, and indeed to the same type of property. Hence, the exceptions cannot be distinguished on grounds that they are applicable to different subject matter, that one is applicable to property and the other to activity. The Ninth Circuit reached the opposite conclusion only by ignoring the clear language that appears on the face of the statute itself.

Beyond the statutory language, there is no useful distinction between a regulation of "property," and a regulation of "activity" that indirectly affects property. Suppose, for example, that a county zoning ordinance permits residential but not industrial development in a particular area, thereby prohibiting the construction of a sawmill; the Ninth Circuit would presumably prohibit the application of this ordinance on an Indian reservation, since it directly regulates "property." However, suppose instead that the county ordinance prohibits any person from transporting logs through residential areas; the Ninth Circuit would presumably allow the application of this ordinance on an Indian reservation, since it constitutes a regulation of "activity" that only indirectly affects property. But the latter ordinance would effectively prevent an Indian from operating a sawmill on a reservation, and thus would have

the same effect as the former ordinance. Thus, a regulation of "activity" can be sufficiently stringent to prevent a property owner from using his property in a certain way, and thus have the same effect as a regulation of "property." Clearly the distinction suggested by the court is one of form, not substance. It would allow the State to accomplish indirectly that which it cannot accomplish directly. The distinction is thus wholly unrelated to the purposes which Public Law 280 was intended to serve.

The impracticality of the court's distinction between "property" and "activity" is apparent from the fact that the court itself failed to utilize the distinction in considering the various county ordinances involved in this case. Kings County's zoning ordinances presumably constitute a regulation of "property," under the court's analysis. However, the county's ordinance that requires the preparation and consideration of an environmental impact report under CEQA presumably constitutes a regulation of "activity," since the report provides the county with information and does not directly regulate "property." Nonetheless, the court held *both* ordinances inapplicable to the plaintiffs' homes. Thus, the court, by failing to apply its own distinction to the facts of the case, avoided the very factual thicket which it directed other courts to enter in future cases.

For the above reasons, it is clear that Public Law 280 can be given a harmonious construction only by construing the word "encumbrance" as *not* including State regulation of the use of property. Moreover, this result accords with the usual meaning of the word "encumbrance," as used in the field of property law. That word is used in covenants guaranteeing that property is free of "encumbrances," a

guarantee that enables a buyer of the property to void the purchase contract if the property is in fact "encumbered." *E.g., Hall v. Risley,* 188 Or. 69, 213 P.2d 818 (1950); *Miller v. Milwaukee Odd Fellows Temple,* 206 Wis. 547, 240 N.W. 193 (1932); 4 Tiffany, Real Property § 1005, p. 141 (3d ed. 1939); 55 Am. Jur., Vendor and Purchaser, § 250. Certainly the buyer cannot void his purchase contract on the grounds that the covenant fails to reveal that the property is subject to various land use laws of the State and its political subdivisions. Accordingly, the courts have clearly ruled that the word "encumbrance" denotes only those property rights and interests held by a third party in the property, such as liens, easements and leases. *Ibid.* In particular, the courts have ruled that the word has no application to land use laws enacted by the State and its political subdivisions pursuant to the State's police power, such as building and zoning restrictions. *Goldfarb v. Dietz,* 8 Wash. App. 464, 506 P.2d 1322, 1325 (1973); *Fritts v. Gerukos,* 273 N.C. 116, 159 S.E.2d 536, 539 (1968).[23] Such laws are enacted for the protection of the public health, safety and welfare, and do not result in the creation of property rights and interests in third persons, *Ibid.*

Our conclusion is further supported by the fact that the word "encumbrance" has historically been used, in the field of federal Indian law, in its usual property sense. Under the historic federal policy against the alienation of Indian property, Congress has passed many laws to protect Indians from divesting themselves, either by "alienation" or "encumbrance," of part or all of their property in commercial

23. However, a *violation* of such land use restrictions may constitute an "encumbrance," since such a violation might result in the imminent imposition of other types of "encumbrances," such as liens. See, *e.g., Goldfarb v. Dietz, supra.*

transactions with the white man, at least without approval by a federal official. As Cohen noted, the policy sprang from "the desire to protect the Indian against sharp practices leading to Indian landlessness, [and] the desire to safeguard the certainty of titles . . . ." Cohen, *Handbook of Indian Law* (U.S. Govt. Printing Off., 1942), 221; see generally U.S. Dept. of Interior, *Federal Indian Law* (U.S. Govt. Printing Off., 1958), 40-43, 61-62, 675-685, 787-791, 798-803. As this Court has stated, the Indians "needed to be safeguarded against their own improvidence during the period of transition [from a state of dependent wardship to one of full emancipation]." *Smith v. McCullough,* 270 U.S. 456, 464-465 (1926); see also *United States v. Waller,* 243 U.S. 452 (1917).[24] Accordingly, the General Allotment Act of 1887, 24 Stat. 388, the basic Indian law for nearly a half century, provided that Indians should be free of any "charge or *incumbrance*" at the time they receive a fee patent for their trust allotments. *Id.* at 389. (Emphasis

24. "These limitations upon the power of the Indians to sell or make contracts respecting land that might be set apart to them for their individual use and benefit were imposed to protect them from the greed and superior intelligence of the white man. Congress well knew that if these wards of the nation were placed in possession of real estate, and were given capacity to sell or lease the same, or to make contracts with white men with reference thereto, they would soon be deprived of their natural holdings; and that, instead of adopting the customs and habits of civilized life and becoming self-supporting, they would speedily waste their substance and very likely become paupers. The motive that actuated the lawmaker in depriving the Indians of the power of alienation is so obvious, and the language of the statute in that behalf is so plain, as to leave no room for doubt that Congress intended to put it beyond the power of white men to secure any interest whatsoever in lands situated within Indian reservations that might be allowed to Indians." *Beck v. Flournoy Livestock & Real-Estate Co.,* 65 Fed. 30 (8th Cir. 1894).

added.)[25] Similarly, the Indian Reorganization Act of 1934, 48 Stat. 984, which replaced the 1887 act as the basic Indian law, enabled Indians to adopt tribal constitutions to prevent the "sale, disposition, lease, or *encumbrance* of tribal lands, interests in lands, or other tribal assets." *Id.* at 987. (Emphasis added.) Thus, the limitation against an "encumbrance" in Public Law 280 was intended merely to continue the historic federal policy against the alienation of Indian lands, by limiting the extent to which the white man can, in commercial transactions with Indians, acquire a property interest in the Indians' trust property. It was intended to protect Indians against their own folly. It was not intended to prevent the State and its political subdivisions from regulating the use of such property, to the extent necessary to protect the public health, welfare and safety. The Ninth Circuit failed to even consider the meaning of the word "encumbrance" in the context of the historic federal policy against alienation.

D. THE FEDERAL ASSISTANCE PROGRAMS.

As we have noted, Public Law 280 prohibits the State from regulating the use of Indian trust property inconsistently with a federal "statute." 28 U.S.C. § 1360(b). The Ninth Circuit held that the county's ordinances are inconsistent with federal statutes authorizing the BIA to administer its HIP program, and the IHS to provide sanita-

25. In *Quinault Allottee Ass'n v. United States,* 485 F.2d 1391, 1396 (Ct. Cl. 1973), the court ruled that, in the 1887 act, "Congress was speaking only in conventional terms of an encumbrance on the fee, such as would be represented by a lien or a mortgage." Accordingly, the court ruled that administrative charges incurred by the United States resulting from timber sales did not constitute an "encumbrance," and thus could be deducted from the proceeds of the sales.

tion aid to Indians. App. 25-27.[26] In fact, there is no inconsistency between these federal statutes and the county's ordinances. The statutes merely authorize the BIA and IHS to develop programs for the distribution of funds appropriated by Congress for Indians; for instance, the HIP program was developed by the BIA pursuant to a statute authorizing the BIA to "direct, supervise, and expend" funds appropriated by Congress for Indians. 25 U.S.C. § 13. These statutes do not in any way limit or affect the application of State or county land use laws on Indian reservations.

Since the county's ordinances are not inconsistent with the federal *statutes* pursuant to which the BIA and IHS developed their assistance programs, the Ninth Circuit must have assumed that the ordinances are inconsistent with the *programs* themselves. However, we have already noted that federal agencies lack authority to develop programs that limit the applicability of State laws on Indian reservations, where Congress itself has not authorized the limitation of such State laws. See p. 28, *supra; Organized Village of Kake v. Egan,* 369 U.S. 60, 63 (1962); *Hynes v. Grimes Packing Co.,* 337 U.S. 86 (1949). In fact, Public Law 280 clearly authorizes the application of State land use laws on Indian reservations under limited circum-

26. The Court ruled that the county's ordinances are inconsistent with four federal statutes, *i.e.* with (1) 25 U.S.C. § 13, which authorizes the BIA to "direct, supervise, and expend" funds which Congress appropriates for Indians, (2) 86 Stat. 508 (1972), otherwise known as Public Law 92-369, which authorizes "grants and other assistance to needy Indians," (3) 42 U.S.C. § 2004a, which authorizes various services to be provided to Indians, and (4) 85 Stat. 44 (1971), otherwise known as Public Law 92-18, which appropriate funds for "Indian health services." The BIA's HIP program was developed pursuant to the first two statutes, and the IHS's sanitation aid program was developed pursuant to the latter two statutes.

stances, as we have seen. See pp. 22-24, *supra*. Therefore, the federal statutes cited by the court do not enable the BIA and IHS, under their authority to develop assistance programs, to thereby revoke the States' limited authority under Public Law 280.

In fact, there is no inconsistency between the programs of the BIA and IHS and the county's ordinances in this case. The federal programs merely provide financial and other assistance to Indians. They do not limit, even inferentially, the application of county land use ordinances applicable to property which is the subject of such programs. The county's ordinances merely require the plaintiffs to obtain administrative approval before using their mobile homes in particular locations, and to pay minor fees and obtain minor permits. See pp. 4-5, *supra*. It is thus entirely consistent for the federal agencies to provide financial assistance enabling the plaintiffs to buy their mobile homes, and the county to apply its ordinances to insure that the mobile homes will be used consistently with State and local land use interests. Thus, the county's ordinances do not conflict with the assistance programs of the BIA and IHS, much less with the federal statutes pursuant to which the programs were developed.

Virtually all Indian trust property receives assistance, in one form or another, from programs developed by the BIA or other federal agencies pursuant to congressional authorization. To conclude that such property is thereby immune from State land use laws would effectively preclude the application of those very laws which Public Law 280 made applicable to such property. Congress surely did not intend for the assistance programs developed by federal agencies to be used as an excuse to nullify the authority which it gave the States under Public Law 280.

This conclusion clearly appears from the legislative history of one of the federal statutes cited by the court, and it is significant that the court again made no reference to this history. According to the Senate report preceding the enactment of 42 U.S.C. § 2004a, which authorizes the IHS to provide sanitation aid to Indians:

> "This proposed legislation is in line with the policy of the Congress and the Department of the Interior to terminate duplicating and overlapping functions provided by the Indian Bureau for Indians by transferring responsibility for such functions to other governmental agency wherever feasible, and the enactment by the Congress of legislation having as its purpose to repeal laws which set Indians apart from other citizens, such as the following Acts recently enacted by the Congress: . . . The Act of August 15, 1953 (Public Law 280, 83d Cong., 1st Sess.) conferring of civil and criminal jurisdiction over Indians upon certain states . . . ." S.Rep. No. 1530, 83d Cong., 2d Sess. 2 (1954).

This statement clearly indicates that Congress did not regard the federal statute as inconsistent with the jurisdiction given to the States under Public Law 280.

CONCLUSION

The clear, unambiguous language of Public Law 280 indicates that the States and their political subdivisions are authorized to apply their land use laws on Indian reservations. The meaning of this language is easily confirmed by the act's legislative history. The Ninth Circuit, by ignoring both the clear language of the act and its legislative history, has contrived a result that completely overturns what Congress meant to accomplish in passing the act. Its decision shows how far a court can go in using the canon of construction, applicable only where a federal Indian law is ambiguous, to reach a result opposite to that intended by Congress.

The Ninth Circuit's decision prevents California, and other States which have received jurisdiction over Indian reservations under Public Law 280, from fully protecting their land use interests, as those interests are affected by the use of land on Indian reservations. Indeed, California has a vital interest in such land uses. Such uses have a profound effect on many of the State's resources, such as its water and air, an effect that is not confined to the reservation's boundaries. A sawmill on a reservation, for example, may pollute the water and air adjacent to the sawmill, and the pollutants may be carried to off-reservation areas. The protection of the State's off-reservation forests in *People v. Rhoades,* 12 Cal.App.3d 720, 90 Cal. Rptr. 794 (1970), depended on the State's ability to require an Indian to build a firebreak around his on-reservation house. Thus, the State's interest in reservation land uses permeates the boundaries of the reservation itself. It is not sufficient to suggest that federal or tribal authorities can adequately protect these interests, for these authorities do not typically regulate, at least to any substantial degree, land uses on

Indian reservations. Therefore, the lower court's decision effectively frees such reservations of any effective land use controls altogether, and ignores the State's interest in applying such controls.

We recognize, of course, that the State's interest in regulating land use of Indian reservations may be subject to stringent limitations in States which have not received jurisdiction over such reservations under Public Law 280. Cf. *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164 (1973). But these limitations are clearly not applicable, at least to the same degree, in States which have received such jurisdiction. Moreover, we recognize that, even in the latter States, the State's interest in regulating land use should not override tribal interests in all instances, to the same extent that the State's interest overrides the private interests of its other citizens. However, the tribal interest is fully protected by the limitations contained in Public Law 280 itself, which precludes the States from regulating Indian property inconsistently with a federal treaty, agreement, statute or regulation. Thus, that statute sought to achieve an accomodation between State and tribal interests in the use of land. The Ninth Circuit's decision, in prohibiting the application of State land use laws no matter how compelling the State interest or minimal the tribal interest, destroys that accommodation.

For the foregoing reasons, we respectfully urge the Court to grant our petition for writ of certiorari.

Respectfully submitted,

LARRY G. MCKEE
County Counsel
RODERICK WALSTON
Special Deputy County Counsel

Attorneys for Defendants and Petitioners

United States Court of Appeals for the Ninth Circuit

Filed—Nov 3 1975
Emil E. Melfi, Jr. Clerk
U.S. Court of Appeals

No. 74-1565

Santa Rosa Band of Indians; Mark Barrios; and Pete Baga,
Plaintiffs-Appellees,

vs.

Kings County; Charles Gardner, Planning Director and Chairman of the Planning Commission of Kings County; and Kings County Planning Commission,
Defendants-Appellants.

OPINION

Appeal from the United States District Court
for the Eastern District of California

Before: KOELSCH and DUNIWAY, Circuit Judges, and KELLEHER,* District Judge.

KOELSCH, Circuit Judge:

This case presents important questions regarding the extent of the civil jurisdiction over Indian reservation trust lands conferred upon state and local governments by P.L. 280, 28 U.S.C. § 1360. Specifically, the suit is a controversy between the Santa Rosa Band of Indians to-

*The Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

gether with two individual members and Kings County, California, over the applicability of the County's Zoning Ordinance and Building Code on the Santa Rosa Rancheria, the Band's reservation. The Santa Rosa Band is an Indian Tribe organized under § 476 of the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-478 (1970); legal title to the Rancheria lands is held in trust by the United States for the use and benefit of the Band. *See* 25 U.S.C. § 465.

The background of the dispute is this:

Plaintiffs Barrios and Baga are members of the Santa Rosa Band. They are both poor. Each has been living with his family on an assignment (a plot of the trust land) within the Rancheria, but in totally inadequate housing. To remedy his family's housing problems, each applied in early 1973 to the Bureau of Indian Affairs (B.I.A.) for assistance in procuring mobile homes under the Bureau's Housing Improvement Program (H.I.P.). After examining the purchase documents for the mobile homes tentatively selected, the B.I.A. approved both purchases, and authorized the maximum H.I.P. grants available, $3,500, to apply towards the purchase prices. At the same time, the Indian Health Service (I.H.S.), an agency within the Department of Health, Education and Welfare, as part of a widespread project to upgrade various California Reservation water and sanitation systems, made plans to provide plaintiffs' H.I.P. housing with water and sanitary plumbing.[1]

1. During oral argument the court on its own motion raised the issue of whether or not this dispute presented a justiciable case or controversy. In supplemental memoranda both parties took the affirmative, but on different bases. Appellees argued that the record affirmatively established actual threats of Kings County's enforcement of its Zoning Ordinance. Appellants, on the other hand, urged that although no direct enforcement action against the Rancheria is apparent, the very existence of the Ordinance is sufficient here to create a justiciable controversy. The court has only recently removed all doubt concerning this question. In *Construction Industry Assn. of Sonoma County v. The City of Petaluma*, ... F.2d ..... (No. 74-2100, 9th Cir. Aug. 13, 1975), we held that a zoning ordinance which operated of itself adversely to affect the value and marketability of the owners' lands for residential uses constituted a sufficient threat of a direct and personal injury to the landowners to enable them to commence and prosecute a declaratory suit. We thus turn to the merits.

However, after purchasing the mobile homes, plaintiffs learned that under § 402 of the County Zoning Ordinance (Kings County Ordinance No. 269) the Rancheria was zoned as a General Agricultural District, and, under § 402C(7), that use of a mobile home as a residence in such an area is permitted only with prior administrative approval, and then only for a maximum period of two years. Plaintiffs were informed by County officials that to obtain the discretionary administrative approval an application had to be submitted to the County Zoning Administrator, accompanied by a fee to defray the Planning Department's expense in preparing a required environmental impact report, and a site plan. Approval is granted if the Administrator decides that the proposed use is in conformity with the other provisions and objectives of the Zoning Ordinance. § 1803, Zoning Ordinance. Plaintiffs were advised that the County Building Code required inspections and permits for utility hookups and for the plumbing work which the I.H.S. planned to perform; these permits, too, entailed payment of fees. Plaintiffs lack money to pay the fees to seek the permits and have been unable to obtain mail service, utility hookups, or the I.H.S. water and sanitation services; they are presently deprived of the full use of the housing.

Being of the opinion that the County lacked jurisdiction to enforce its land use ordinances on the Rancheria,

Barrios and Baga, and the Santa Rosa Band (several of whose members are presently awaiting H.I.P. mobile home grants) brought this action for declaratory and injunctive relief to restrain enforcement of the ordinances. The district court granted the requested relief. The County appealed; we affirm, except for some modification we require in the judgment entered below.

At the outset, we emphasize that this suit involves an attempt to regulate Indian use of Indian trust lands. We are clear, regardless of the modification worked in the exclusive Federal jurisdiction and tribal sovereignty doctrines of *Worcester v. Georgia,* 31 U.S. (6 Pet. 515) 350 (1882), by subsequent Court decisions such as *Organized Village of Kake v. Egan,* 369 U.S. 60 (1962), and *Williams v. Lee,* 358 U.S. 217 (1959), that in any event any concurrent jurisdiction the states might inherently have possessed to regulate Indian use of reservation lands has long ago been pre-empted by extensive Federal policy and legislation. *Warren Trading Post Co. v. Arizona Tax Comm'n.,* 380 U.S. 685 (1965); *McClanahan v. Arizona State Tax Comm'n.,* 411 U.S. 164, 176, 176 n.15 (1973); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973); *Williams v. Lee, supra,* at 220-221. Congress, by the Indian Reorganization Act, authorized the government to purchase the lands involved here, and to hold the title in trust; it also authorized adoption of a tribal constitution for the exercise of tribal self-government over the area. 25 U.S.C. § 476. Against the historical backdrop of tribal sovereignty (subject only to the paramount power of the United States) over reservation lands, we have little doubt that Congress assumed and intended that states had no power to regulate the Indian use or governance of the reservation provided, except as Congress chose to grant that power.

McClanahan, supra, at 175.[1a] Indeed, P.L. 280, by defining the limits of the jurisdiction granted "P.L. 280 states" such as California, necessarily pre-empts and reserves to the Federal government or the tribe jurisdiction not so granted. *See McClanahan, supra,* at 172 n.8. *Cf. Kennerly v. District Court,* 400 U.S. 423 (1971).

Thus the County is without jurisdiction to enforce its zoning ordinance or building code on the Rancheria unless such jurisdiction is explicitly granted by P.L. 280, 28 U.S.C. § 1360. We hold, for a number of alternative reasons, that P.L. 280 does not confer such jurisdiction.

1a. In *McClanahan* the Court disclaimed reliance on the *Worcester v. Georgia* "platonic" notion of Indian sovereignty in favor of a pre-emption approach, but, as we read its opinion, reached a conclusion very similar to that which would obtain under *Worcester v. Georgia*—that states may not regulate or tax Indian use of the reservation absent Federal consent. The Court distinguished state efforts to regulate off-reservation Indian activities, or reservation activities of non-Indians, from state efforts to tax or regulate Indian use of the reservation, holding the latter pre-empted by the grant of the reservation. Hardly any other result could be reached, either in *McClanahan* or here. The historical model provided by *Worcester v. Georgia* has been used continuously in congressional policy towards the Indians. Reservation of trust lands has long provided a major vehicle for Federal policy towards Indians, and Congress has passed a myriad of statutes over the years dealing with their purchase, allocation, regulation, maintenance and use. *See, e.g.,* 25 U.S.C. §§ 381-390, 391-415, 461-465, 483, 502, 1451, 1466, 1496(f). Congress fashioned a criminal justice system which divided jurisdiction between the federal courts and Indian tribal courts, excluding the states except as to crimes committed on reservations in which neither perpetrators nor victims are Indians. See 18 U.S.C. §§ 1152, 1153; C. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians,* 22 U.C.L.A. L. Rev. 535, 541 (1975). And it gave governing power over the reservation to tribal governing authorities subject to Federal supervision. *See* 25 U.S.C. § 476, 25 U.S.C. § 1301 *et seq. See United States v. Mazurie,* ..... U.S. ....., 42 L. Ed. 2d 706 (1975). We think it unquestionable that the history of congressional dealings with the Indian trust lands is more than adequate to evidence an intent to oust state regulation over the same lands. *See Warren Trading Post, supra.*

The statute provides:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) [California] . . . shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise [within any Indian country within the state] . . . to the same extent that [California] . . . has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

• • • • •

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States . . .; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section. . . ."

I. *Grant of P.L. 280 jurisdiction to local governments*

The first impediment to enforcement of the County ordinances is that they are not "civil laws of [the] State . . . that are of general application . . . within the State. . . ."

This is a matter of first impression for this court; district courts in this circuit have split on the issue.[2] Plaintiffs, contending that local ordinances are not state laws of "general application . . . elsewhere within the State," rely on *Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir. 1973) (holding local ordinances not state laws within the meaning of the Railroad Safety Act of 1970, 45 U.S.C. § 434), and *Moody v. Flowers*, 387 U.S. 97 (1967) (holding local ordinances are not state statutes within the meaning of 28 U.S.C. § 2281, requiring convening of a three-judge district court to enjoin a state statute). *See Board of Regents v. New Left Education Project*, 404 U.S. 541 (1972). The County relies on California cases recognizing that the County is authorized to exercise home rule by the state constitution[3] and within its jurisdiction exercises the state's police power, and on cases such as *Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U.S. 548 (1914), which hold such local ordinances to be state law within the meaning of the Federal Constitution, and present 28 U.S.C. § 1257, for purposes of determining the appellate jurisdiction of the Supreme Court. *See Restatement (Second) Conflict of Laws* § 3, comment b (1969).

On the whole we find those cases unhelpful except insofar as they demonstrate the obvious—that the phrase "state

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2. The district court in this case, in an unreported opinion, held that local ordinances were not made applicable by P.L. 280. *Santa Rosa Band of Indians v. Kings County*, Civ. No. F-836 (E.D. Cal. Oct. 12, 1973). *Compare Rincon Band of Mission Indians v. County of San Diego*, 324 F. Supp. 371, 373-376 (S.D. Cal. 1971), *rev'd on other grounds*, 495 F.2d 1 (9th Cir. 1974).

3. Section 7, Article XI, of the California Constitution provides:

"A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."

statute" (and even more so, "civil laws of [the] State of general application . . . elsewhere within the State . . .") is ambiguous. *See* Note, *The Extension of County Jurisdiction over Indian Reservations in California: Public Law 280 and the Ninth Circuit,* 25 Hastings L.J. 1451, 1485 (1974). The statute may be read either as only making applicable to Indian reservations those civil laws passed by the state legislature which are of statewide application, or, additionally, also to make applicable county or municipal ordinances which apply equally to Indians and non-Indians.[4]

To resolve that ambiguity in P.L. 280, we begin with the fundamental postulate, enunciated in *Worcester v. Georgia, see* 31 U.S. at 393, that ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians. *See McClanahan, supra,* at 174-175; *Menominee Tribe v. United States,* 391 U.S. 404 (1968); *Kimball v. Callahan,* 493 F.2d 564 (9th Cir. 1974). This principle is somewhat more than a canon of construction akin to a Latin maxim, easily invoked and as easily disregarded. It is an interpretive device, early framed by John Marshall's legal conscience, for ensuring the discharge of the nation's obligations to the conquered Indian tribes. The Federal government has long been recognized to hold, along with its plenary power to regulate Indian affairs, a trust status to-

4. The plaintiffs point out that the local ordinances involved here have no force and effect in the State of California outside the County, and argue that to read "civil laws of such State" to include the County ordinances renders nugatory the clause "same force and effect . . . as they have elsewhere within the State . . . ." There is some force to plaintiffs' contention but it is inconclusive; the county in which the local ordinance has force is "elsewhere within the State . . ." in the sense that it is not within Indian country, and the local legislation thus made effective is not directed solely at the reservation. While the latter reading is admittedly somewhat strained, we think it sufficiently plausible that we choose to rest on a different ground.

wards the Indian—a status accompanied by fiduciary obligations. *See Seminole Nation v. United States,* 316 U.S. 286, 297 (1942); *United States v. Kagama,* 118 U.S. 375 (1886); *Beecher v. Wetherly,* 95 U.S. 517, 525 (1877); *Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1, 12 (1831).[5] While there is legally nothing to prevent Congress from disregarding its trust obligations and abrogating treaties or passing laws inimical to the Indians' welfare, the courts, by interpreting ambiguous statutes in favor of Indians, attribute to Congress an intent to exercise its plenary power in the manner most consistent with the nation's trust obligations. *See Squire v. Capoeman,* 351 U.S. 1, 7-8 (1956).

Applying that principle of construction here, we have little difficulty in concluding, in light both of the immediate burden the County ordinances would place on these plaintiffs, and more generally of the devastating impact the County's construction of the statute would have on tribal self-rule and tribal economic development of reservation resources,[6] that P.L. 280 subjected Indian Country only to the civil laws of the state, and not to local regulation.

The County argues that because P.L. 280, and particularly the legislative history of the act, is assimilationist in tone, a congressional intent to make the broader grant of jurisdiction must be found. (Indeed, seizing on language in the legislative history indicating the desirability of making Indians full and equal citizens a district court in this circuit

5. In *Kagama* the Court stated:
"These Indian tribes *are* the wards of the nation. . . . Because of the local ill feeling the people of the states where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power." 118 U.S. at 383-384.

6. *See* Goldberg, *supra* n. 1, at 575-576; Hastings L.J., at 1458.

has interpreted the statute as equally subjecting reservation Indians to the full panoply of state, county and municipal ordinances faced by other citizens. *Rincon Band of Mission Indians v. County of San Diego,* 324 F. Supp. 371, 373-376 (S.D. Cal. 1971), *rev'd on other grounds,* 495 F.2d 1 (9th Cir. 1974), *cert. denied,* 43 USLW 3281 (Nov. 11, 1974). *See* Hastings L.J., *supra,* at 1488-1489; C. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians,* 22 U.C.L.A. L. Rev. 535, 581 (1975) [hereinafter Goldberg]). We cannot agree; we are unpersuaded by such general statements of assimilationist intent in the context of the specific problem at hand.

There is nothing specific in the legislative history shedding any light on whether or not Congress intended to subject reservation trust lands to local civil or criminal ordinances. If anythin the legislative history indicates that Congress gave the problem little, if any, thought. The original impetus for P.L. 280 was a perceived need to extend state criminal jurisdiction to certain California reservations; by the time the bill was passed, it had mushroomed into a general measure conferring a degree of state criminal and civil jurisdiction on several states. However, civil jurisdiction was extended almost as an afterthought. There is very little in the legislative history indicating the congressional rationale for extending civil jurisdiction, or to indicate the extent of that jurisdiction. *See* Goldberg, at 540-544. And there is no indication that Congress gave any thought or study to the effects on, or prospective nature of, the relationship, insofar as regulation of reservation civil affairs was concerned, which would thereafter exist between the B.I.A., administrator of the trust property, the states, local governments, and Indian tribes, which theretofore exercised substantial self-government over the reservation.

In light of the absence of more specific guidance in the statute or legislative history, we decline to extend jurisdiction to the County solely on the basis of general expressions of sentiment regarding the desirability of terminating Federal paternalistic supervision of tribes or the need for making Indians equal first class citizens—a construction denying the County jurisdiction probably serves those purposes as well or better than one granting it.

Moreover, despite the broad language in the legislative history, the statute itself is not altogether assimilationist in character, and was passed against a substantial backdrop of Indian legislation and policy with which it must be integrated. As one commentator recently noted:

> "Over the years, Congress and the Department of the Interior, which have shared responsibility for formulating and implementing federal Indian policy, have operated on a variety of divergent models for appropriate interaction between the Indians and the states. One model focuses on the inclusion of Indian reservations within state boundaries, the rights of Indians as state citizens, and the desirability of Indian assimilation into the mainstream of American culture; its policy implications have included removing Indian lands from trust status and subjecting Indians to state law.[7] An-

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"7. This policy shaped the Allotment Act of 1887, ch. 119, 24 Stat. 388-91 (profusely amended, this Act is still in force, 25 U.S.C. §§ 331-58 (1970)), which distributed reservation lands to individual Indians as an incentive to the development of an agrarian way of life. The allotted lands were to be removed from trust status when the Indians demonstrated their adaptation to that way of life. Although no such alteration occurred, the allotment system resulted in indiscriminate liquidation of the federal trust responsibility, often over Indian protests, and a sharp decline in Indian land holdings.

"The same policy accounted for the numerous statutes passed during the 1950's terminating the trust status of indi-

other model focuses on the unique status of Indian tribes as sovereignties antedating the European settlement of America, the special federal responsibility for Indian welfare, and the decentralized nature of jurisdiction in the United States generally; it has tended to produce policies fostering tribal autonomy and economic development of reservations through federal training, subsidies, loans, technical assistance, and insulation from the burdens of state law.[8] In between are models which favor either assimilation or tribal autonomy, but interpose the federal government as an umpire, protecting Indian or state interests against extreme abuses by the other." Goldberg, at 536. (footnotes quoted below)[7] *See* Hastings L.J., *supra,* at 1463-1469.

While on balance P.L. 280 reflects an assimilationist slant in Federal policy,[8] it is a compromise measure. *See* Goldberg, at 537; Hastings L.J., *supra,* at 1489. It did not end the tax exempt status of trust lands, *see* § 1360(b), and significantly limited state regulation of Indian trust property. Most importantly, P.L. 280, while passed with an eye towards eventual termination of Federal supervision over

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vidual reservations. *See, e.g.*, 25 U.S.C. § 677 (1970) (Ute); 25 U.S.C. §§ 691-708 (1970) (western Oregon tribes); 25 U.S.C. §§ 891-902 (1970) (Menominee).

"8. Tribal self-government and economic development were encouraged by the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-78 (1970).

"A return in recent years to similar policies is manifested in President Nixon's 1970 Message to Congress, 116 Cong. Rec. 23131 (1970), and in recent federal legislation facilitating long-term leasing of Indian land. 25 U.S.C. § 415 (1970). *See also* S. Con. Res. 26, 92d Cong., 1st Sess. (1971); S. 3157, 92d Cong., 2d Sess. (1972)." Goldberg, at 536 n. 7 and 8.

8. The statute was passed *in pari materia* with the Menominee Termination Act, 25 U.S.C. § 891 *et seq.*, and the Klamath Termination Act, 25 U.S.C. § 546 *et seq.*

Indian tribes and Indian trust territory, is not itself a termination statute. Congress, recognizing that most Indian tribes living on restricted lands in 1953 were economically or educationally unprepared for termination, undertook a more gradual process; P.L. 280 is only a part of that process. The statute shifted jurisdiction over Indian Country from the Federal government to the states in some respects, but in others prolonged existing Federal supervision and Indian immunity from state jurisdiction, awaiting the decision by Congress, on a case-by-case basis, that termination of a particular tribe, with consequent imposition of all aspects of state jurisdiction,[9] was appropriate. The broad language in the legislative history relied on by the County announces the congressional objectives of the entire termination process, but was not meant to describe the interim status of Indians or trust lands before completion of the process.

From that perspective, we conclude that Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations. Prior to passage of P.L. 280, Congress had encouraged, under § 476 of the Indian Reorganization Act, the formation and exercise of tribal self-government on reservation trust lands. A construction of P.L. 280 conferring jurisdiction to local county and municipal governments would significantly undermine, if not destroy, such tribal self-government. By transferring regulation of all matters of local concern to local governments, the tribal government would be left little or no scope to operate. We think it more plausible that Congress had in mind a distribution of jurisdiction

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9. *Compare* P.L. 280, conferring pre-termination jurisdiction, *with* 25 U.S.C. § 564q, the provision of the Klamath Termination Act conferring post-termination jurisdiction on the state.

which would make the tribal government over the reservation more or less the equivalent of a county or local government in other areas within the state, empowered, subject to the paramount provisions of state law, to regulate matters of local concern within the area of its jurisdiction. *See* Goldberg, at 581.

This view finds support in the provisions of § *1360(c)*, which contemplates the continued vitality and operation of the tribal government.[10] *See* Goldberg, at 582. If Congress had intended local governments to supplant tribal ones in regulating matters of concern local to the reservation, we doubt it would have included a provision establishing the continuing validity of tribal ordinances.[11] Furthermore, Indians, who do not own the fee to reservation lands, are unable under many state laws to incorporate reservation lands in order to acquire lawmaking powers. *See* Cal. Gov't Code § 34301 (West Supp. 1974). Thus, the position urged by the County would not only ascribe to Congress the intent substantially to strip Indian tribes of their sphere of self-regulation, but also to leave them in the unequal position of being unable to obtain the measure of self-determination provided by state law to its other citizens.

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10. "Any tribal ordinance . . . heretofore or hereafter adopted by any Indian tribe . . . shall, if not inconsistent with any applicable civil law of the State, be given full force . . . ." 28 U.S.C. § 1360(c).

11. The substantial exceptions attached in § 1360(b) to state exercise of jurisdiction over trust property—precisely the area over which Indian tribes exercise self-government—indicate a congressional unwillingness to subject Indian use of the reservation to hostile legislation even by the state, and are hence inimical to the claims of the reservation's local neighbors, who are potentially more hostile to the Indians than the statewide government, that they were given authority identical to the state's under § 1360(a) to regulate use of the reservation.

A construction of P.L. 280 denying jurisdiction to local governments comports with the present congressional Indian policy. The assimilation policy reflected in P.L. 280 was to a great extent a failure, *see* Hastings L.J., at 1471-1473, and has been discarded[12] in favor of policies fostering Indian autonomy, reservation self-government and economic self-development. *See* n.7 *supra*. *See* Indian Financing Act of 1974, 25 U.S.C. § 1451 *et seq.;* Hastings L.J., at 1472-1473; Goldberg, at 549-551; Comment, *State Jurisdiction Over Indian Land Use: An Interpretation of the "Encumbrance" Savings Clause of Public Law 280,* 9 Land and Water L. Rev. 421, 428-429 (1974); Price, Law and the American Indian 596 *et seq.* (1973), and sources there cited. While we recognize an obligation to follow the congressional intent when construing P.L. 280, we are not obliged in ambiguous instances to strain to implement a policy Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship. *See Capitan Grande Band of Mission Indians v. Helix Irrigation District,* No. 73-2956 (9th Cir., Mar. 14, 1975), slip opinion at 2 n.2.

As previously noted, extension of local jurisdiction is inconsistent with tribal self-determination and autonomy. Were regulation of reservation affairs preempted by local governments, present tribal governments would be relegated to the positions of overseers of tax-exempt property, or the board of directors of a business. We are reluctant to enforce such a result, for as the Court recently recognized, tribal governments have long been thought and held to have

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12. The Indian Civil Rights Act of 1968, codified at 25 U.S.C. §§ 1311-1312, 1321-1326, amended P.L. 280 by making state assumption of jurisdiction contingent upon tribal consent, thereby ending the process of unwilling termination.

inherent sovereign powers of government within Indian Country.

> "[I]ndian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, *Worcester v. Georgia,* 6 Pet. 515, 557 (1832); they are 'a separate people' possessing 'the power of regulating their internal and social relations . . . .' *United States v. Kagama,* 118 U.S. 375, 381-382 (1886); *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164, 173 (1973).
>
> "Cases such as *Worcester, supra,* and *Kagama, supra,* surely establish the proposition that Indian tribes within 'Indian country' are a good deal more than 'private, voluntary organizations' . . . These same cases in addition make clear that . . . [Indian tribes are] . . . entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life. . . ." *United States v. Mazurie,* ..... U.S. ....., 42 L. Ed. 2d 706, 716-717 (1975).

Moreover, tribal use and development of tribal trust property presently is one of the main vehicles for the economic self-development necessary to equal Indian participation in American life. Extension of local jurisdiction to the reservation would burden that development by increasing its cost. For instance, the building code dealt with in *Ricci v. County of Riverside,* Civ. No. 71-1134-EC (C.D. Cal., Sept. 9, 1971), *appeal dismissed as moot,* 495 F.2d 1 (9th Cir. 1974), by prescribing quality standards for building materials, made the cost of constructing a home on the reservation prohibitive to most reservations Indians, thereby effectively, albeit unintentionally, locking them into substandard housing conditions. *See* Hastings L.J., at 1474-1475, 1487. But more critically, subjecting the reservation

to local jurisdiction would dilute if not altogether eliminate Indian political control of the timing and scope of the development of reservation resources, subjecting Indian economic development to the veto power of potentially hostile local non-Indian majorities. Local communities may not share the usually poorer Indians' priorities, or may in fact be in economic competition with the Indians and seek, under the guise of general regulations, to channel development elsewhere in the community. And even when local regulations are adopted in the best of faith, the differing economic situations of reservation Indians and the general citizenry may give the ordinance of equal application a vastly disproportionate impact.

Given the present Federal policies of fostering tribal self-government and economic self-development, we think an interpretation of P.L. 280 excluding local jurisdiction is mandated. The result, given the fact that Indians and surrounding communities are often likely to have differing views of the relative priority of economic development, environmental amenity, public morals,[13] and the like, is that there may inevitably be some abrasion between Indian communities and local neighbors. That, however, does not dictate eliminating Indian jurisdiction. The fact that Indians are involved in the squabble does not make the dispute unusual; precisely the same sort of conflicts often exist between non-Indian local communities with differing priorities. The remedy here, as there, is that when such conflicts involve a matter in which the state has a sufficient stake or interest to legislate, the state may, subject to the limitations of § 1360(b), pass a law of statewide application

13. For instance, in *Rincon, supra,* it appears that the state permitted some forms of gambling, but permitted County regulation of the matter, and that the County had passed an ordinance proscribing the Indians' activity.

resolving the matter. And if the state is unable to act alone, it may seek Federal cooperation.

II. *Application of 25 C.F.R. § 1.4, and the "encumbrance" limitation*

Even assuming these County ordinances were "civil laws of such State or Territory that are of general application to private persons or private property" such that they would have application on the Rancheria under § 1360(a), nevertheless jurisdiction was not granted the County in this instance because the ordinances fall within exceptions enumerated in § 1360(b).

Section 1360(b) denies to the states the authority to regulate real property belonging to an Indian tribe held in trust by the United States in "a manner inconsistent with any Federal . . . statute or with any regulation made pursuant thereto . . . ." 25 C.F.R. § 1.4 provides:

> "§ 1.4 State and local regulation of the use of Indian property.
>
> "(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States . . . .
>
> "(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. . . ."
>
> 30 Fed. Reg. 7520 (June 9, 1965).

The Secretary has adopted all California state zoning ordinances under this section but has explicitly chosen not "to adopt or make applicable" local ordinances. *See* 30 Fed. Reg. 8722. As Kings County's Zoning and Building Code ordinances are ordinances of a political subdivision "limiting, zoning or otherwise governing, regulating, or controlling the use or development of . . . real . . . property. . . .", County application of its ordinances to the Rancheria is barred by 25 C.F.R. § 1.4(a), and consequently the County is not authorized to exercise jurisdiction under P.L. 280.[14]

We are aware that several commentators have suggested that 25 C.F.R. § 1.4 is invalid because lacking in specific statutory authorization,[15] or because in derogation of the jurisdiction conferred by P.L. 280; and that at least two district courts have refused to apply its provisions for those reasons. *See Rincon Band, supra,* at 377-378; *Norvell v. Sangre de Cristo Development Company, Inc.,* 372 F. Supp. 348 (D. N. Mex. 1974). We conclude that the regulation is valid.

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14. As the County is without jurisdiction to enforce its ordinances, we voice no opinion on whether or not the Federal statutes providing housing and sanitation services evidence an intent to pre-empt County regulation of the housing provided here. The County regulations are inapplicable; the County has no jurisdiction to pre-empt. For the same reason, we voice no opinion on a similar ground relied on by the district court, that Federally authorized and funded construction projects on Federal land are exempt from local regulations which burden the completion of the project. *See Arizona v. California,* 283 U.S. 423 (1931); *City of Birmingham v. Thompson,* 200 F.2d 505, 509 (5th Cir. 1952); *United States v. City of Philadephia,* 147 F.2d 291 (3d Cir. 1945); *United States v. City of Chester,* 144 F.2d 415 (3d Cir. 1944); *Oklahoma City v. Sanders,* 94 F.2d 323 (10th Cir. 1938).

15. *See* Goldberg, at 586 n. 229; Price, *supra,* at 290-293.

Rule-making authority for the "management of all Indian affairs and of all matters arising out of Indian relations" is conferred by 25 U.S.C. § 2; 25 U.S.C. § 9 delegates rule-making authority to "effect the various provisions of any act relating to Indian affairs. . . ." It has been held that neither provision grants general regulatory powers to the Secretary of the Interior; to be valid a regulation must be reasonably related to some other specific statutory provision. *See Organized Village of Kake v. Egan, supra,* at 63; United States Department of the Interior, Federal Indian Law 56-57 (1966); Cohen, Handbook of Federal Indian Law 102-103 (1945). We think 25 U.S.C. § 465, which authorizes the Secretary to purchase land for the "purpose of providing land for Indians" and to take the title to such lands in trust, when read against the history of Federal policy governing use and control of Indian trust property, is sufficient to sustain the regulation as it applies to the Rancheria lands, obtained pursuant to § 465.

Land held in trust for the benefit of Indians has long played the central role in Federal policy towards Indians. Cohen, *supra,* at 94. While the manner in which trust property is held and may be used has been in part defined by statute, a great many of the most significant incidents of the trust property relationship are not statutorily created, but rather a result of judicial definition. The doctrine of Federal ownership of Indian land stems from *Johnson & Graham's Lessee v. McIntosh,* 21 U.S. (8 Wheat.) 240 (1823), which held the general government obtained title through the right of discovery exercised by colonial predecessors. The rudiments of the wardship or trust status of Indian tribes was announced in *Cherokee Nation v. Georgia, supra,* at 12—a consequence of Federal ownership of title to lands the Indians occupied. The exclusivity of Federal jurisdiction over trust lands, whether based on an ownership

theory, *United States v. Kagama, supra,* or commerce clause theory, *Worcester v. Georgia, supra,* was likewise recognized by Court decision. Most importantly for our purposes here, the immunity of Indian use of trust property from state regulation, based on the notion that trust lands are a Federal instrumentality held to effect the Federal policy of Indian advancement and may not therefore be burdened or interfered with by the state, is a product of judicial decision. *United States v. Rickert,* 188 U.S. 432 (1903). Each of these judicially defined characteristics of Indian trust property remained implicit in subsequent congressional enactments dealing with trust property.

The language used in § 465 must be read against this backdrop, which provides the implicit substance of what the language signifies. We are confident that when Congress in 1934 authorized the Secretary to purchase and hold title to lands for the purpose of providing land for Indians, it understood and intended such lands to be held in the legal manner and condition in which trust lands were held under the applicable court decisions—free of state regulation.[16]

In that light, the Secretary's regulation, insofar as it denies to the states the power to zone Federal trust property acquired under § 465,[17] reasonably implements the

16. Section 465 explicitly exempted the lands acquired from state taxation. Rather than reading the omission of a provision exempting the lands from state regulation as evidencing a congressional intent to allow state regulation, we read the omission as indicating that Congress simply took it for granted that the states were without such power, and that an express provision was unnecessary; *i.e.,* that the exemption was implicit in the grant of trust lands under existing legal principles.

17. We leave open the question of the validity of the regulation insofar as it asserts the power of the Secretary *vis-a-vis* an Indian tribe to adopt state or local zoning ordinances on trust property.

statute. The regulation simply expresses the Secretary's understanding of the prior law defining the conditions under which he holds the land acquired and under which the Indians may use the land provided for them, *see* 5 U.S.C. § 301; it is undoubtedly an accurate expression of the congressional understanding of the conditions under which it authorized acquisition of lands for Indian use.[18]

Moreover, in P.L. 280 states such as California, the regulation may be independently justified as an administrative interpretation of the word "encumbrance" in § 1360(b) itself, clarifying the scope of the jurisdiction over trust property granted the states. *See* text at n.19 *infra.*

The question remains whether the regulation is in derogation of the grant of jurisdiction made by P.L. 280. Section 465 was passed in 1934, P.L. 280 in 1953, and the regulation was adopted in 1965. Despite changes in the doctrinal justifications underlying the immunity of trust lands from state supervision which occurred between 1934 and 1965, *see Williams v. Lee, supra; Warren Trading Post, supra; McClanahan, supra,* the substance of that immunity remained relatively unchanged. Whether one

18. We need not decide the validity of the regulation as applied to lands not acquired pursuant to § 465—the lands involved here were so acquired. So far as we can discover, there is no general statute authorizing the holding of title to Indian lands in trust by the United States, as does § 465, or authorizing the Secretary of the Interior to administer trust lands. The first power is apparently an inherent incident of the judicially recognized ownership status; the second derives from the Secretary's 25 U.S.C. § 2 authority. We merely note that as the nature of the trust property relationship between the Federal government and the Indian tribes is rather uniquely a product of judicial decision rather than statute, and as Congress has implicitly acted on it and ratified it for so long, and as that relationship provides the central framework for "Indian relations," that this may be a situation in which the regulation is sustainable under 25 U.S.C. § 2 alone.

views it as a matter of exclusive Federal jurisdiction or Federal preemption, *see* n.1 *supra,* absent a grant of jurisdiction states remained as unable to regulate trust lands in 1965 as they had been in 1934. Thus the regulation promulgated in 1965 accurately defined the conditions under which the trust property involved here was to be held and used, unless the intervening passage of P.L. 280 altered those conditions in mandatory P.L. 280 states such as California by giving the state power to zone trust property. We conclude that it did not.

P.L. 280 expressly disclaims authorizing state "encumbrance of any real . . . property held in trust by the United States . . . ." 28 U.S.C. § 1360(b). The word "encumbrance" is of course ambiguous, and courts have split on whether or not it evidences an intent to exempt trust lands from state zoning and land use regulations. *Compare Snohomish County v. Seattle Disposal Co.,* 70 Wash. 2d 668, 425 P.2d 22 (1967), *cert. denied,* 389 U.S. 1016 (1967) (Douglas and White, J. J., dissenting), *with Rincon Band, supra, and Agua Caliente Band of Mission Indians' Tribal Council v. City of Palm Springs,* 347 F. Supp. 42 (C.D. Cal. 1972), *vacated and remanded* by this court in an unpublished order, January 24, 1975. *See* Hastings L.J., at 1496-1499; Goldberg, at 586-587; Price, *supra,* at 277-283. Relying on the canon of construction applied in favor of Indians, the Court has ruled in different contexts that the word "encumbrance" is to be broadly construed and is not limited to a burden which hinders alienation of the fee, *see Squire v. Capoeman, supra; Rickert, supra; Kirkwood v. Arenas,* 243 F.2d 863 (9th Cir. 1957), rather focusing on the effect the challenged state action would have on the value, use and enjoyment of the land. *See* Hastings L.J., at 1498-1499. *Compare* the majority and dissenting opinions in

Snohomish, supra. Following the Court's lead, and resolving, as we must, doubts in favor of the Indians, we think that the word as used here may reasonably be interpreted to deny the state the power to apply zoning regulations to trust property.[19]

We have previously discussed the various reasons of policy and history for narrowly construing the grant of jurisdiction to exclude local governments. In large part similar reasons are applicable here, and no purpose is served by extensive reiteration. Suffice it to say that application of state or local zoning regulations to Indian trust lands threatens the use and economic development of the main tribal resource—here it even handicaps the Indians in living on the reservation—and interferes with tribal government of the reservation. *See* Goldberg, at 587. Consequently, a construction of the term "encumbrance" more consonant with present congressional policy is mandated.[20]

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19. We need not decide the full dimensions of the "no encumbrance to trust property" exception, as we are certain in any event that the regulation's proscription of the local zoning ordinances involved here falls well within it, and is hence not in derogation of the statutory grant. Nevertheless, it has been suggested that the word "encumbrance" might be interpreted so broadly as to eliminate state regulation of all activity occurring on trust property. *See* Goldberg, at 587. We note that 25 C.F.R. § 1.4 is conceivably subject to the same objection. As we read "encumbrance," it is directed, consonant with the flavor of the word's narrow legal meaning, at traditional land use regulations and restrictions directed against the property itself, and does not encompass regulations of activity which only incidentally involve the property. *See Rincon, supra,* at 376-377. However, the full dimensions of the statutory exception, and the validity of 25 C.F.R. § 1.4 when asserted in other contexts as a bar to state jurisdiction, must await determination on a case-by-case basis.

20. Two arguments have been advanced for defining "encumbrance" narrowly. We find neither persuasive. The first, advanced by the dissent in *Snohomish,* is that a broad construction leaves the state without police power to protect the safety of its other citizens living near reservations and was therefore not intended by Congress. The argument is essentially a make-weight—the states were without power to enforce land use restrictions against the reservation before the passage of P.L. 280 and are no worse off if the statute does not confer such authority. Basically the argument is an expression of the assumption that the statute was wholly assimilationist in all its parts, and therefore must be interpreted to give the states the same regulatory power over Indians as exercised over other citizens. *See Snohomish, supra,* at 425 P.2d 27-29 (dissent). For reasons already stated, we do not share that assumption. The second argument, advanced in *Rincon, supra,* is that a broad reading of "encumbrance" to preclude application of zoning regulations to trust lands would render redundant the clause: ". . . or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation . . . ." We disagree. As we read it, *see* n.19 *supra,* "encumbrance" is narrower than the latter clause, precluding all regulations or restrictions attached directly to land use, whereas the latter clause encompasses all *activity* located on reservation land, permitting comprehensive state regulation except where preempted by or inconsistent with overriding Federal enactments.

As P.L. 280 may reasonably be construed not to grant P.L. 280 states the jurisdiction to zone trust lands, the Secretary's regulation does not contradict the statute; and as it is validly authorized and reasonable, the regulation is entitled to the force and effect of law. Thus, both as a consequence of the regulation, and, independently, of our construction of "encumbrance" in the statute itself, the local zoning ordinance and building code are inapplicable on the Rancheria.

III. *Inconsistency with Federal statutes.*

Finally, application of the ordinances in the circumstances presented here is inconsistent with the statutes authorizing the B.I.A. and I.H.S. to provide housing and sanitation aid to the plaintiffs. The H.I.P. was adopted pursuant to 25 U.S.C. § 13 and funded by P.L. 92-369. The I.H.S. services are provided under 42 U.S.C. § 2004a, using funds appropriated by P.L. 92-18. The purpose of both

statutory programs is to upgrade the deplorable living conditions of many reservation Indians; funds are limited under both programs. Application of various local zoning and building ordinances rather than uniform Federal standards greatly enhances the difficulty of administering the Federal programs, adds expense to already tight budgets, and ultimately detracts from the programs' goals. The fees charged here by the County directly impede the receipt of the Federal services. The Zoning Ordinance, which subjects the Federally provided housing to the discretionary administrative approval of a County official, and to use for a two-year limit, threatens altogether to prevent plaintiffs' use of the housing, and at the very least impedes its provision and use. And the Building Code, which requires permits for the provision of the I.H.S. services, likewise hinders the performance of the duties authorized by § 2004a. We are therefore clear that application of the County's ordinances here is "inconsistent" with the Federal statutes, and that, for this reason as well, the County is without jurisdiction to do so.

Finally, we turn to an issue which the parties have not urged but which we feel we must address—the breadth of the district court's judgment. In our opinion, paragraph 3(b) of the judgment entered is overbroad, going beyond the applicable principles outlined above and beyond the relief requested by plaintiffs. It not only enjoins enforcement of the particular County ordinances in issue which purport to regulate use of the Rancheria, but also prevents enforcement of any County ordinance, now or hereafter enacted, which incidentally "adds expense or inconvenience" to the maintenance "of housing facilities or appurtenances thereto" when funded by a federal agency—it might, for example, be interpreted (improperly, we think)

to enjoin the County from charging Rancheria Indians the same fee for County-supplied water, for sanitation hookups, required of other County residents, or to require the County to otherwise discriminate in favor of the Indians. While controlling principles we have discussed above bar County regulation of Indian land by indirect subterfuges, they do not bar all incidental on-reservation consequences of County regulations. The court must determine on a case-by-case basis when concrete disputes arise whether the County has jurisdiction to enforce a particular ordinance under the applicable jurisdictional principles enunciated above.

Consequently, we vacate paragraph 3(b) of the district court's order and remand for the court to fashion a judgment consistent with all the fundamentals and on all the bases enunciated by this opinion (the presence of Federal funding is not a necessary condition to enjoining defendants' enforcement of County ordinances on trust land), but limited in its language and application to actual or reasonably anticipated grievances arising from disputed ordinances which purport to control what may or must be done on the Indian lands. On remand, the court should make further findings delineating the manner in which any particular County ordinance whose enforcement is enjoined has impermissibly intruded, or threatens to intrude, on Indian use of the Rancheria.

Affirmed in part; vacated and remanded in part.

United States Court of Appeals
for the Ninth Circuit

Filed—Mar 26 1976

Emil E. Melfi, Jr.

Clerk, U.S. Court of Appeals

No. 74-1565

Santa Rosa Band of Indians; Mark Barrios; and Pete Baga,
Plaintiffs-Appellees,

vs.

Kings County; Charles Gardner, Planning Director and Chairman of the Planning Commission of Kings County; and Kings County Planning Commission,
Defendants-Appellants.

Before: KOELSCH and DUNIWAY, Circuit Judges, and KELLEHER,* District Judge.

*The Honorable Robert J. Kelleher, United States District Judge for the Central District of California, sitting by designation.

ORDER DENYING PETITION FOR REHEARING AND REJECTING SUGGESTION FOR REHEARING IN BANC

The panel, as constituted in the above case, voted to deny the petition for a panel rehearing and to deny motion of the State of California, et al., to appear, post opinion, as amicus curiae and to file an amicus brief. Judges Koelsch and Duniway voted against a rehearing in banc, and Judge Kelleher recommended that a rehearing in banc be rejected and the motion be denied.

The full court has been advised of the suggestion for an in banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing in banc. F. R. App. P. 35(b).

The petition for rehearing is denied, the motion is also denied, and the suggestion for a rehearing in banc is rejected.

Appendix 2

28 U.S.C. § 1360.

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the

United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Appendix 3

30 Fed. Reg. 6438 (May 8, 1965):

Department of the Interior

Bureau of Indian Affairs

[25 CFR Part 1]

STATE AND LOCAL REGULATION OF USE OF INDIAN PROPERTY

Applicability of Rules of the Bureau of Indian Affairs

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Revised Statutes, sections 161 (5 U.S.C. 22), and 463, and 465 (25 U.S.C. 2 and 9), and pursuant to other authorizing acts, it is proposed to add a new section to Part 1, Subchapter A, Chapter I, Title 25 of the Code of Federal Regulations, concerning State and local regulation of the use of Indian property.

The purpose of this addition is two-fold. First, it will enunciate and particularize in regulatory form for the benefit and guidance of those concerned the sense of existing law under which laws, ordinances, codes, resolutions, rules or other regulations of a State or its political subdivisions limiting, zoning or otherwise governing, regulating or controlling the use or development of property are inapplicable to trust or restricted Indian property held or used under a lease or other agreement. Second, it will provide for the adoption and application by the Secretary in specific cases, after consultation with the Indian owner, of all or part of any laws enacted by a State or any of its political subdivisions regulating the use of property, which would otherwise be inapplicable.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to partici-

pate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed regulation to the Bureau of Indian Affairs, Washington, D.C., 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Part 1, Subchapter A, Chapter I, Title 25, Code of Federal Regulations, is amended by adding thereto a new § 1.4 to read as follows:

§ 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative, after consultation with the Indian landowner, may in specific cases expressly adopt and apply all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner in achieving the highest and best use of such property.

JOHN A. CARVER, JR.,
Under Secretary of the Interior.

MAY 4, 1965.

[F.R. Doc. 65-4927; Filed, May 7, 1965; 8:48 a.m.]

Appendix 4

25 U.S.C. § 465:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided,* That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to sections 461, 462, 463, 464, 465, 466-470, 471-473, 474, 475, 476-478, and 479 of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

In the

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, *et al.*,
Plaintiffs and Respondents,

vs.

KINGS COUNTY, *et al.*,
Defendants and Petitioners.

Supplemental Brief for the Petitioner

LARRY G. MCKEE
County Counsel
Kings County Courthouse
Hanford, California 93230

RODERICK WALSTON
Special Deputy County Counsel
6000 State Building
San Francisco, California 94102
Tel.: (415) 557-3920

Attorneys for Defendants and Petitioners

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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SANTA ROSA BAND OF INDIANS, *et al.*,
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Supplemental Brief for the Petitioner

INTRODUCTION

We file this supplemental brief, under Rule 24(4), to respond to a new argument raised by the respondents in their brief in opposition to our petition for writ of certiorari. Their new argument is based on this Court's recent decision in *Bryan v. Itasca County,* No. 75-5027 (June 14, 1976), rendered after we filed our petition.

In *Bryan,* the Court held that Pub.L. 280 does not authorize States affected thereunder to levy taxes on Indians or Indian property. The Court noted that this result is sustainable under section 4(b) of Pub.L. 280, which expressly exempts "taxation" of any Indian property held in trust by the United States[1]. The Court suggested that this exemption may include "taxation on activities taking place in conjunction with such property and income deriving from

its use," Slip Op. 17, which would include the Indian property involved in that case. This result, the Court stated, is amply supported by the "total absence of mention or discussion regarding a congressional intent to confer upon the States an authority to *tax* Indians or Indian property on reservations," and by a colloquy during the House committee hearings that "strongly suggests that Congress did not mean to grant *tax* authority to the States." *Id.* at 7-8. (Emphasis added.) Thus, the decision is fully sustainable on grounds not relevant to the instant case, since this case does not involve the taxation of Indian property.

As an alternative basis for its decision, the Court stated that section 4(a) of Pub.L. 280 empowers the courts of the affected States to adjudicate civil controversies to which Indians are parties, but does not otherwise empower the States to regulate the conduct or property of Indians on reservations. *Id.* at 10-12.[2] According to the decision, this

1. Section 4(b) provides:
"Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein." 28 U.S.C. § 1360(b).

2. Section 4(a) provides:
"Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State."

28 U.S.C. § 1360(a).

conclusion is sustained by the "sparse legislative history" of the act, and the "absence of anything remotely resembling an intention to confer general state civil regulatory control over Indian reservations." *Id.* at 10-11.

a. Report of Department of the Interior.

However, the most vital, relevant piece of the legislative history, with respect to the meaning of section 4(a), was not before the Court in the *Bryan* case, and was not referred to by the parties or the United States. We refer to a report from the U. S. Department of the Interior to the House Committee on Interior and Insular Affairs, dated June 29, 1953, which we recently found in the Department's files, and which is appended hereto.[3] This report suggested

3. The date of the report, June 29, 1953, is the same date that Mr. Sellery, the Department's representative, testified before the House Committee; his testimony was quoted at length in the *Bryan* decision. Slip. Op. 8-9. Mr. Sellery referred to the report in his testimony. Tr. 2-5. At the hearings, the Department was requested by the committee to prepare a follow-up memorandum, describing the reaction of the various Indian tribes to H.R. 1063. Tr. 6. The follow-up letter, dated July 7, 1953, was published in the official House report, H.R. Rep. No. 848, 83d Cong., 1st Sess. (1953), and referred to therein as the Department's "favorable report," *id.* at 7. The Department's original report of June 29, 1953, was inadvertently omitted from the House report.

sweeping changes in H.R. 1063, the bill which was finally enacted as Pub.L. 280. It was on the basis of this report that the House committee amended H.R. 1063 in the form that was finally approved by Congress. One of the suggested changes related to section 4(a). The report removes any doubt that the change was intended to authorize the affected States to regulate the conduct and property of Indians on reservations, subject to exceptions spelled out in section 4(b).

To fully appreciate the significance of the Department's report, it is necessary to first understand the extent to which H.R. 1063 was modelled after analogous legislation. In 1948, Congress enacted a law applicable to New York, which provides:

> "The courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State." 25 U.S.C. § 233.

In 1949, Congress enacted another law applicable solely to the Agua Caliente reservation in California, Pub.L. 322, which provides:

> "All lands located on the Agua Caliente Indian Reservation . . ., and the Indian residents thereof, shall be subject to the laws, civil and criminal, of the State of California, . . . " 63 Stat. 705 (1949).

Thus, the New York law merely authorized the courts of New York to adjudicate controversies to which Indians are parties, which would apparently authorize New York to apply her civil laws to Indian reservations only to extent necessary to resolve legal disputes involving Indians;

this grant of authority would apparently exclude the applicability of New York's regulatory laws on such reservations. Conversely, the Agua Caliente law more broadly authorized California to apply *all* her civil laws on the Agua Caliente reservation, a grant of authority which would include California's regulatory laws. This conclusion appears even more clearly from the legislative history of the Agua Caliente act; as we shall see, that history shows that Congress intended to authorize California to apply her regulatory laws, particularly the zoning laws of her political subdivisions, on the Agua Caliente reservation. See pp. 8-9, *infra.*

In its original form, H.R. 1063 followed the New York model, not the Agua Caliente model. H.R. 1063 initially provided, in relevant part:

> "The courts of the State of California shall have jurisdiction, under the laws of the State, in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent that the courts of such State have jurisdiction in other civil actions and proceedings." H.R. 1063, 83d Cong., 1st Sess. (Jan. 6, 1953).

The Department's report noted that the bill, in this form, "would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved." App. 1. However, the report suggested that the bill be amended to provide, in section 4(a):

> "Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and

those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State: . . ." App. 7-8. (Emphasis added.)

The Department's recommendation was approved by the House committee, and eventually by Congress. The emphasized portion of the suggested amendment clearly indicates that the amendment was intended to bring the bill into conformity with the Agua Caliente model, rather than the New York model. This conclusion appears even more clearly from the following statement in the Department's report:

> "The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that *the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as those laws are of general application to private persons or private property.*" App. 2-3. (Emphasis added.)[4]

This statement thus clearly indicates that the amendment was intended to allow the States to apply *all* their civil laws, including regulatory laws, on Indian reservations, and was not limited to merely allowing the State courts to

4. This statement further indicates that the section was not amended merely to allow the State courts, in adjudicating Indian controversies, to apply State laws to such controversies. The section, in the original form quoted above, gave the State courts jurisdiction over Indian controversies "under the laws of the State," which was sufficient authority for the State courts to apply their civil laws to such controversies. In fact, the phrase, "under the laws of such State," appears in the New York act cited above, and is sufficient authority for New York to apply its own laws in adjudicating controversies involving Indians.

adjudicate controversies involving Indians. If the bill were only intended to accomplish the latter purpose, it need not have been amended along the lines suggested by the Department.[5]

Any remaining doubts concerning the amendment's purpose are removed by the following passage from the Department's report:

> "The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. *This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A like policy should be applied to the rest of the State.* In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes." App. 2. (Emphasis added.)

Because of the overlapping nature of H.R. 1063 and Pub. L. 322, the report further recommended the repeal of the

5. The *Bryan* decision stated that its conclusion is supported by the "consistent and uncontradicted references in the legislative history to 'permitting' '*State courts to adjudicate* civil controversies' arising on Indian reservations,' " citing a reference in the House report. Slip Op. 10. (Emphasis in the original.) However, the cited reference in the House report merely indicates that, "*as introduced,*" a provision "was made" in H.R. 1063 for "permitting the California State courts to adjudicate civil controversies" involving Indians. H.R. No. 848, 83d Cong., 1st Sess. 5 (1953). (Emphasis added.) Thus, the reference in the House report was to H.R. 1063 in its *original* form, *i.e.* "as introduced." The House report subsequently noted that the bill, in its *final* form, contained a provision "permitting the State courts to adjudicate civil controversies arising on Indian reservations, *and* . . . [*extending*] *to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property* . . . ." *Id.* at 6. (Emphasis added.) The report's divergent descriptions of the effect of H.R. 1063, in its original and final forms, is a further indication that the bill in its final form was not confined to merely granting the State courts jurisdiction to adjudicate Indian controversies.

relevant parts of Pub. L. 322, "in order to make the *same* civil and criminal jurisdictional statute applicable to all Indian country within the State." App. 4 (Emphasis added.) Accordingly, the relevant parts of Pub. L. 322 were repealed by the enactment of Pub. L. 280. 67 Stat. 590 (1953).

The latter statement in the Department's report thus indicates that Pub. L. 280 is based on a "like policy" to that underlying Pub. L. 322, and that Pub. L. 280 is, except for its applicability to other reservations in California, the "same civil and criminal jurisdictional statute" as Pub. L. 322. Accordingly, there can be do doubt that Congress, in passing Pub. L. 280, intended to follow the Agua Caliente model, not the New York model. This conclusion in turn strengthens the conclusion that Congress meant to allow the States to apply their regulatory laws, particularly their zoning laws, on Indian reservations. The Agua Caliente reservation consists of a series of parcels, mostly trust allotments, that are located wholly within the City of Palm Springs, and, as noted in the legislative history applicable to Pub. L. 322, are "intermingled in a checkerboard pattern with highly developed urban land of great value." H.R. Rep. No. 956, 81st Cong., 1st Sess. 2 (1949). See Amicus Brief of City of Palm Springs, App. "A." Accordingly, Pub. L. 322 was enacted to prevent the disorderly and chaotic development of lands within the city's borders, by subjecting Indian lands within the city's borders to the city's zoning laws. During the congressional hearings relating to Pub. L. 322, the Assistant Commissioner of Indian Affairs stated that then-existing limitations on the city's ability to regulate zoning of reservation lands resulted in the lack of an "overall pattern . . . needed for protecting property values and increasing the maximum utilization of the city as a whole." *Hearings on H.R. 4616 Before the Subcommittee on Indian Affairs of the Committee on Public Lands,* 81st Cong., 1st Sess., ser. 16, at 3 (1949). The congressman who represented the area in question further testified at the hearings:

> "[T]his section of the bill is for the purpose of conferring jurisdiction over the police, fire and sanitary regulations, and so on, upon the State of California." *Id.* at 132.

Since the legislative history of Pub. L. 322 clearly shows that California's regulatory laws were applicable on the Agua Caliente reservation, the Department's report shows that Congress, in passing Pub. L. 280, meant to achieve the same result with respect to *all* reservations in California. If the result were otherwise, the enactment of Pub. L. 280 would have resurrected the same land use problems in the City of Palm Springs, resulting from the checkerboard nature of Indian and non-Indian lands, that were laid to rest by the enactment of Pub. L. 322.[6]

b. The Arizona Leasing Act.

Our conclusion is further supported by the enactment in 1966 of legislation relating to the leasing of certain Indian

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6. The report also recommended that the title of the bill be changed to "a bill to confer jurisdiction on the State of California with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such State, and for other purposes." App. 5. This title was approved by the House committee, and ultimately by Congress. It is thus apparent that the States' regulatory laws were meant to be encompassed within the title's reference to "and for other purposes," or that such laws were meant to be enforced through the medium of civil or criminal actions brought in the States' courts. To suggest otherwise would emasculate the report's statement that the suggested changes "would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State . . . ." See p. 6, *supra.*

lands in Arizona, 25 U.S.C. §§ 416-416j, an act which is one of the "intervening" legislative enactments which the *Bryan* decision held to be relevant in interpreting P.L. 280. Slip Op. 13. Section 9 of the 1966 act provides that Indians under the act are authorized "to enact *zoning, building, and sanitary regulations* covering the lands on their reservations . . . *in the absence of State civil and criminal jurisdiction over such particular lands.* . . ." 25 U.S.C. § 416h. (Emphasis added.) Arizona has not received jurisdiction over Indian reservations under Pub. L. 280. The cited provision is thus a clear congressional recognition that, since Arizona has not received "civil and criminal jurisdiction," the tribes have authority to enact "zoning, building, and sanitary regulations," but that, if Arizona receives such jurisdiction, Arizona will have authority to enact its own zoning, building and sanitary regulations. Neither the parties nor the United States referred to this congressional enactment in the *Bryan* case.

c. Section 4(b).

Turning to section 4(b), that section provides specific exceptions to the authority granted to the States in section 4(a). In particular, section 4(b) contains a fundamental distinction between State laws relating to "taxation" of Indian trust property, and State laws consisting of a "regulation of the use" of such property. See n. 1, *supra*. The section imposes an *absolute* prohibition on State "taxation" of such property. However, the section prohibits State "regulation of the use" of such property only to the extent that the regulation is "inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto." The significance of this distinction is heightened by the fact that H.R. 1063, in its original form, contained an absolute prohibition against *any* "regulation

of its [Indian trust property] use."[7] However, the House committee changed the provision to its present form, which authorizes limited State "regulation of the use" of such property. It is thus clear that Congress intended to continue the historic immunity of Indian trust property from State tax laws, but—recognizing the compelling interests of the States in protecting, *inter alia*, the quality of their air and water resources—intended to grant the States limited authority to regulate the use of such property. This conclusion shows that the *Bryan* decision was correctly decided on its facts, but also shows that the decision should not be controlling here.

d. Inconsistency of Bryan Decision and Ninth Circuit Decision.

Although the *Bryan* decision cites the decision of the Ninth Circuit in this case with approval, Slip Op. 15 n. 14, the decisions are fundamentally inconsistent with respect to the applicability of State regulatory laws on Indian reservations. The Ninth Circuit held that, under section 4(a), "State" regulatory laws are applicable on Indian reservations under Pub.L. 280, but "county" regulatory laws are not. Pet. for Writ of Cert., App. 6-18. The court pointedly observed:

> "[W]hen such conflicts [between Indians and non-Indians] involve a matter in which the state has a

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7. In its original form, H.R. 1063 provided:
> "That as long as the title to any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, group, or community is held in trust by the United States or is subject to restrictions against alienation under any law, treaty, or agreement of the United States, nothing in this section shall authorize the alienation, encumbrance, or taxation of such property or the adjudication or *regulation of its use*, or shall confer jurisdiction upon the State courts in any civil action, probate, or other proceeding affecting the ownership, title, possession, or any other interest in such property." H.R. 1063, 83d Cong., 1st Sess. (Jan. 6, 1953). (Emphasis added.)

> sufficient stake or interest to legislate, the state may, subject to the limitations of § 1360(b), pass a law of statewide application resolving the matter."
> *Id.* at 17-18.

The court held, however, that, under section 4(b), neither "State" nor "county" laws may be applied to Indian trust property, if such laws directly regulate "property" rather than "conduct." *Id.* at 24 nn. 19, 20. Hence, the court clearly indicated that "State" laws applicable to Indian "conduct," which may include many of California's air and water quality laws, are applicable on Indian reservations, under section 4(a). The *Bryan* decision concludes otherwise, however. Thus, the *Bryan* decision would strike down many "State" laws that the Ninth Circuit's decision would uphold. The inconsistency between the decisions warrants, we believe, a closer examination by this Court of the meaning of section 4(a), in the context of a State regulatory law that is unrelated to taxation.

CONCLUSION

The instant case squarely presents a question that was not before the Court in the *Bryan* case, *i.e.* whether State regulatory laws, as opposed to State tax laws, are applicable on Indian reservations under Pub.L. 280. The most informative piece of legislative history relating to this question, *i.e.* the report of the Department of the Interior of June 29, 1953, was not before the Court in the *Bryan* case.

Moreover, both the language and legislative history of Pub.L. 280 are fundamentally different with respect to the applicability of these laws, as we have noted. The policy considerations are also different, for the States have a more compelling interest in providing limited regulation

of the use of Indian lands than in increasing their revenues at the Indians' expense; the regulation of the use of such lands enables the States to protect the quality of their off-reservation resources, such as air and water, that may be affected by on-reservation activities. Further, since the *Bryan* decision held that Indians are subject to State *criminal* laws under Pub.L. 280, the States could, even under the Court's decision, effectively apply their civil regulatory laws on Indian reservations by the simple expedient of making it a crime to violate these laws; since it is unlikely that Congress meant to allow the States to accomplish by one means what they cannot accomplish by others, it is likely that Congress intended to make the applicability of the States' civil regulatory laws co-extensive with the applicability of their criminal laws.[8]

In light of the many land use laws which States have applied, and are applying, to Indian reservations under Pub.L. 280, this is a very important case that, in our view, merits the attention of this Court. The importance of this case is heightened by the fact that Congress recently created a commission, the American Indian Policy Review Commission, to undertake "a comprehensive review of the historical and legal developments underlying the Indians' unique relationship with the Federal Government in order to determine the nature and scope of necessary revisions in the formulation of policies and programs for the benefit of Indians." 88 Stat. 1910 (1975). One of the items to be considered by

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8. This view is also supported by a law review article that was cited extensively in the *Bryan* decision. Slip Op. 5, 14 n. 13, 15 n. 14; Goldberg, "Public Law 280: The Limits of State Jurisdiction over Reservation Indians," 22 *U.C.L.A. L.Rev.* 535 (1975). The article, after a lengthy consideration of the meaning of Section 4(a), *id.* at 576-580, concluded that "it is most likely that criminal and civil jurisdiction were designed to be co-extensive, and similarly regulatory in nature," *id.* at 580.

the commission is the nature and effect of Pub.L. 280. It is important, we believe, that the commission have the benefit of a clear understanding of the applicability of State regulatory laws on Indian reservations, under Pub.L. 280.

For the foregoing reasons, we urge that our petition be granted.

Respectfully submitted,

LARRY G. MCKEE
County Counsel
RODERICK WALSTON
Special Deputy County Counsel
Attorneys for Defendants and Petitioners

(Appendices follow)

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON 25, D. C.

JUN 2 3 1953

My dear Mr. Miller:

This will refer to your request for a report on H. R. 1063, a bill "To amend title 18, United States Code, entitled 'Crimes and Criminal Procedure', with respect to State jurisdiction over offenses committed by or against Indians in the Indian country, and to confer on the State of California civil jurisdiction over Indians in the State".

I recommend that this bill be enacted if its title and text are amended to conform to the enclosed draft.

The bill would extend the criminal laws of the State of California to all the Indian country within that State. Concurrently, it would withdraw the entire State from the operation of the Federal Indian liquor laws. Finally, it would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved.

Approximately 30,000 Indians live in the State of California. They are divided into many different groups, widely dispersed throughout the State. Their lands include a large number of small rancherias and allotments, which are also widely scattered. The State lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in title 18, United States Code, section 1151, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was conferred by the Act of October 5, 1949 (63 Stat. 705).

The applicability of Federal criminal laws is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major

crimes listed in section 1153 of title 18, United States Code. As a practical matter, the enforcement of law and order among Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. The Indians of the Hoopa Valley Reservation and the Yuma Reservation have a form of tribal law enforcement, but none of the other reservations in the State has any means of preserving law and order. Consequently, there is a serious hiatus in law enforcement authority that can best be remedied by conferring criminal jurisdiction on the State. The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A like policy should be applied to the rest of the State. In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H. R. 1063. No opposition to the enactment of the proposed legislation was voiced by any of the Indian groups. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have also indicated their approval.

Proposed legislation similar to H. R. 1063 has been discussed with the Governor of California and he has indicated his approval of the objective of the proposal. The Legislature of California, by Senate Joint Resolution No. 29, has recently memorialized the Congress to enact H. R. 1063.

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to

extend to those reservations the substantive civil laws of the State insofar as these laws are of general application to private persons or private property. The revision would also make it clear that Indian tribal customs and ordinances would continue to be applicable to civil transactions among the Indians insofar as these customs or ordinances are not inconsistent with the applicable State laws. By so doing the predominance of State authority would be assured, but with a minimum of interference with Indian control of Indian affairs.

The enclosed draft is designed to perfect H. R. 1063 in a manner consistent with its basic intent. The only major substantive difference is the omission of the provisions that would have excluded the entire State from the operation of the Federal Indian liquor laws. There is no doubt that the Indians of California are as prepared to be subjected to the State laws regarding intoxicants as they are to be subjected to the other laws of the State. However, general legislation to repeal, in whole or in part, the Indian liquor laws is now before the Congress, and it seems preferable to deal with the subject in that manner rather than in a bill, such as H. R. 1063, having a different primary objective.

In large measure the criminal jurisdiction provisions of the enclosed draft are identical with those of H. R. 1063. The subsection that would have reserved to the Federal courts concurrent jurisdiction over offenses by or against Indians has been omitted as its effect would be to make persons in the Indian country subject to two different, and possibly conflicting, systems of law. For like reasons, a subsection has been added that would render inapplicable in California the Federal criminal laws which apply to offenses committed by or against Indians within the Indian country. Finally, the subsection relating to the protection of trust or restricted Indian property and of Indian fishing and hunting rights has been revised in an effort to make its provisions as precise and certain as possible.

The provisions of the enclosed draft relating to civil jurisdiction are based on those of H. R. 1063, but have been recast in a form that would permit them to be incorporated in the general body of the judicial laws as now codified in title 28 of the United States Code. These provisions are designed to give the State of California

jurisdiction over civil controversies and transactions involving Indians to the fullest extent consistent with the discharge of Federal responsibility for the protection of trust or restricted property. The State and its courts could not take any action that would affect the status of this property in any way or that would improperly deprive the Indians of any of the benefits therefrom. However, once the trust or restriction was terminated by the United States, the jurisdiction of the State and its courts would automatically attach.

Both H. R. 1063 and the enclosed draft would repeal section 1 of the Act of October 5, 1949 (63 Stat. 705), which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Agua Caliente Indian Reservation. The enactment of H. R. 1063, applicable to the entire State, should be accompanied by the repeal of section 1 of this Act in order to make the same civil and criminal jurisdictional statute applicable to all Indian country within the State.

Since I am informed that there is a particular urgency for the submission of the views of the Department, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made concerning the relationship of the views expressed herein to the program of the President.

Sincerely yours,

Secretary of the Interior

Hon. A. L. Miller, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington 25, D. C.

Enclosure

A BILL

To confer jurisdiction on the State of California with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

"1161. State jurisdiction over offenses committed by or against Indians in the Indian country."

SEC. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1160 a new section, to be designated as section 1161, as follows:

"§ 1161. State jurisdiction over offenses committed by or against Indians in the Indian country.

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over

offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian Country Affected
California	All Indian country within the State

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

SEC. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties.

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force

and effect within such Indian country as they have elsewhere within the State:

State of	Indian Country Affected
California	All Indian country within the State

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force

and effect in the determination of civil causes of action pursuant to this section."

SEC. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604) is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

75-1674

SANTA ROSA BAND OF INDIANS, et al.,

Plaintiffs and Respondents

v.

KINGS COUNTY, et al.,

Defendants and Petitioners

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE FORMAN
DENNIS R. HOPTOWIT
CALIFORNIA INDIAN
LEGAL SERVICES
3505 Broadway, Suite 1105
Oakland, California 94611
Telephone 415/547-6260

Attorneys for Plaintiffs
and Respondents

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

SANTA ROSA BAND OF INDIANS, et al.,

Plaintiffs and Respondents

v.

KINGS COUNTY, et al.,

Defendants and Petitioners

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRITE OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINION BELOW

The decision of the U.S. Court of Appeals for the Ninth Circuit is now reported at 532 F.2d 655.

QUESTION PRESENTED

The question presented by the Petition herein is as follows:

Has Public Law 280, 67 Stat. 588 (1953), codified at 18 U.S.C. §1162 and 28 U.S.C. §1360, conferred upon Kings County, California, jurisdiction to enforce its zoning, construction, and other land use regulation ordinances against housing facilities and appurtenant fixtures located on the Santa Rosa Rancheria, an Indian reservation owned in fee by the United States of America and held in trust for the Santa Rosa (Tache) Band of Indians, when such facilities and appurtenant fixtures have been provided

to Indian residents of the Rancheria by the U.S. Bureau of Indian Affairs (B.I.A.) and U.S. Indian Health Service (I.H.S.) under Congressionally authorized and financed programs of assistance to Indian people?

LAWS INVOLVED

In addition to the federal laws listed by Petitioner, this case involves the following additional laws:

1. 25 U.S.C. §§1, 1a;
2. 25 U.S.C. §2;
3. 25 U.S.C. §13;
4. 25 U.S.C. §476;
5. 42 U.S.C. §2004(a);
6. 85 Stat. 40 (P.L. 92-18, May 25, 1971);
7. 86 Stat. 508 (P.L. 92-369, August 10, 1972).
8. Kings County Ordinance No. 269

The relevant provisions of the above-mentioned laws are set forth in Appendix A hereto.

STATEMENT OF THE CASE

A. Statement of the facts.

1. The Rancheria and its residents.

The Santa Rosa Rancheria (Indian Reservation) comprises 170 acres of land near the city of Lemoore, in Kings County, California. Legal title to the land was acquired and is now held in trust by the United States of America for the exclusive use and benefit of the Santa Rosa Band of Indians. Title to the land was acquired by a stipulated decree of the United States District Court for the District wherein the land is located; by a deed from the Federal Land Bank of Berkeley; and by a judgment of the United States District Court for the District wherein the land is

located. [C.T. pp. 7078, 255].

The Santa Rosa Rancheria is occupied by the Santa Rosa (Tache) Band of Indians, an Indian Tribe organized under the Indian Reorganization Act (25 U.S.C. §476), and the governing body of the Band is recognized by the Secretary of the Interior. [C.T. pp. 78-79, 255].

Mark Barrios is a member of the Santa Rosa Band of Indians, and resides upon an assignment (a plot of tribally-owned land) within the Santa Rosa Rancheria. Due to a lack of funds occasioned by his inability to obtain adequate regular employment, and also by a disabling injury, Mr. Barrios, his wife, and their four children lived for several years in the living room of his father's small home on the Rancheria, sharing the house with six other persons. [C.T. pp. 80-82].

Pete Baga is also a member of

the Band, and also resides upon an assignment within the Santa Rosa Rancheria; he has been seasonally employed at low wages. For several years, Mr. Baga, his wife, and their four children lived in a succession of small wooden shacks, without running water or indoor plumbing, because the family never had sufficient funds with which to obtain safe, adequate, healthful, and comfortable housing. [C.T. p. 83].

2. The B.I.A.'s Housing Improvement Program

In 1972, the Bureau of Indian Affairs, Department of the Interior, informed the Band that a limited amount of money would be available under the B.I.A's Housing Improvement Program (H.I.P.) for use in improving or acquiring housing for Rancheria residents. [C.T. p. 81]. The B.I.A.'s H.I.P. assistance is authorized by 25 U.S.C. §13,

and H.I.P. funds are derived from appropriations under Public Law 92-369 (86 Stat. 508, August 10, 1972). The B.I.A. has promulgated comprehensive administrative guidelines and criteria for the administration and provision of H.I.P. services. [C.T. pp. 85-87, 256].

Early in 1973, both Mr. Barrios and Mr. Baga applied to the B.I.A. for H.I.P. assistance in procuring mobile homes, in order to alleviate the critical housing problems of their respective families as quickly as possible. The B.I.A. instructed each of them to select a mobile home for purchase from a local dealer, and to send all of the documents relating to the transaction to the B.I.A. for that agency's inspection and approval.

Mr. Barrios selected a mobile home costing $6,189.75 and Mr. Baga

selected a home costing $7,140.00. The purchase documents were submitted to the B.I.A., where each was processed and approved for the maximum H.I.P. grant available, $3500, the B.I.A. then issued United States Treasury checks in the amount of $3500 each for the purchase of the mobile homes for Mr. Barrios and Mr. Baga. These checks were payable to the vendor of the homes, and were sent directly to the vendor [C.T. pp. 86, 256].

Upon completion of the purchase transactions, Mr. Barrios was informed by an employee of the mobile home vendor that Kings County permits might be necessary in order to locate and utilize the mobile home on his Rancheria assignment. When Linda Barrios contacted the County for further information, she was told that the mobile home would not be allowable under the

County zoning laws, but that if permission were to be obtained, the County would have to perform an environmental impact assessment, for which a fee of $30.00 would have to be paid. [C.T. pp.81-82]. The Barrios family was further informed that before a street address or any utility service hookups could be obtained for for the new mobile home, payment of fees, application for and issuance of other County permits would be necessary. [C.T. pp. 81 120-121].

3. Kings County Ordinance No. 269

Kings County, a governmental subdivision of the State of California, has enacted a Zoning Ordinance (Kings County Ordinance No. 269), consisting of:

> "a zoning plan designating certain districts and regulations controlling the uses of land, the density of popula-

tion, the uses and locations of structures, the height and bulk of structures, the open spaces about structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations requiring the provisions of off-street parking and off-street loading facilities." [C.T. p. 259].

The area in which the Rancheria is located is classified as a General Agricultural District, under §402 C(7) of the Kings County Zoning Ordinance. In such a District, the use of a mobile home as a dwelling is not permitted unless prior administrative approval is obtained from the County Zoning Administrator, [C.T. p. 129].

A person wishing to obtain such approval must submit to the Zoning Administrator an application therefor; this application must conform to the requisites of §1802 of the Zoning Ordinance, and must include, inter alia, a detailed site plan, in triplicate,

[C.T. pp. 136, 254].

4. The Indian Health Service's Water and Sanitation Assistance

During the same period in which the Barrios and Baga families were making efforts to acquire their H.I.P. housing, the United States Indian Health Service (I.H.S.), Department of Health, Education, and Welfare, was planning a widespread project to upgrade water systems on several California Indian reservations, including the Santa Rosa Rancheria, and to provide water and sanitation systems for H.I.P. housing on several Reservations, including the Barrios and Baga mobile homes using funds appropriated by P.L. 92-18 (85 Stat. 40, May 25, 1971). [C.T. pp. 107-115].

Prior to the commencement of work by the I.H.S., the County informed said agency that any and all work per-

formed on the Rancheria was subject to County laws, and that County permits and approvals would have to be obtained therefor. [C.T. p. 127].

Neither Mr. Barrios nor Mr. Baga possessed sufficient funds to comply with the procedure mandated for an application for administrative approval under the County Zoning Ordinance, or to pay the permit fees demanded by the County. [C.T. pp. 82, 84]. Compliance with the County ordinances involved herein by the B.I.A. and I.H.S. would increase the cost of providing these services to needy Indians, would prevent the provision of these services on a uniform statewide basis, and would severely restrict the discretion of these agencies in fulfilling their statutory obligations. [C.T. pp. 86, 260].

B. Decisions of the District Court and the Court of Appeals for the Ninth Circuit.

This action was brought by the Santa Rosa Band of Indians and two individual members thereof, seeking declaratory and injunctive relief to prevent officials of Kings County, California, from enforcing County Zoning and Building Ordinances in such a manner as to interfere with the provision of services to the Band and its members by the United States Bureau of Indian Affairs and the United States Indian Health Service.

The court exercised jurisdiction under 28 U.S.C. §1362, in that the action arose under the laws and Constitution of the United States, and was brought by an Indian Tribe with a governing body recognized by the Secretary of the Interior. The District Court made no ruling on its jurisdiction over the claims of the individual defendants.

Cross-motions for summary judgment

were made, and on October 11, 1973, the court issued its memorandum of decision, granting plaintiffs' motion for summary judgment and denying defendants' motion for summary judgment.

Findings of fact and conclusions of law and formal judgment were entered on December 4, 1973. The findings of fact and conclusions of law were modified and were entered in final form on February 4, 1974. The decision of the District Court was not reported.

The judgment, together with the modified findings of fact and conclusions of law, are set forth in Appendix B hereto. From the judgment of the District Court, with the modified findings of fact defendants appealed to the U.S. Court of Appeals for the Ninth Circuit. On November 3, 1975, the U.S. Court of Appeals issued its opinion affirming the decision of the District Court,

except that the Court of Appeals vacated paragraph 3(b) of the District Court's judgment as being overbroad and beyond the relief requested by plaintiffs; the Court of Appeals remanded the case to the District Court in order that the District Court might

> "fashion a judgment consistent with all the fundamentals and on all the bases enunciated by this opinion..., but limited in its language and application to actual or reasonably anticipated grievances arising from disputed ordinances which purport to control what may or must be done on the Indian lands. On remand, the court should make further findings delineating the manner in which any particular County ordinance whose enforcement is enjoined has impermissibly intruded, or threatens to intrude, on Indian use of the Rancheria." (532 F.2d at 669).

ARGUMENT IN OPPOSITION TO GRANTING OF THE PETITION

The decision of the Court of Appeals that P.L. 280 did not confer upon Kings County jurisdiction to enforce

zoning, construction and other land use ordinances against Indians on the Santa Rosa Rancheria is based upon the following independent grounds:

1. The County ordinances at issue are not "civil laws of [the] State...that are of general application to private persons or private property... elsewhere within the State..." within the meaning of P.L. 280;

2. The County ordinances at issue are inconsistent with 25 C.F.R. §1.4

3. The County ordinances at issue interfere with the use, economic development and tribal government of Indian trust lands within the Santa Rosa Rancheria, and thus constitute "encumbrances" within the meaning of P.L. 280;

4. Application of the County ordinances at issue herein would substantially interfere with the provision of desperately needed services to reservation Indians which Congress has authorized and for which Congress has appropriated funds, and would substantially impede the receipt of such services by the Indians intended to benefit therefrom, thus rendering such ordinances inconsistent with federal laws.

Each of the independent grounds for the Court of Appeals' affirmance of the judgment of the District Court rests upon a sound analysis of relevant authority, and thus renders the granting of the Petition herein unnecessary and inappropriate. In reaching its decision as to each of these grounds, the Court of Appeals carefully considered and analyzed the legislative history of P.L. 280, relevant case law, studies by legal scholars, and the cataclysmic effects which an adverse decision would have upon the lives of the Indian people who would be affected thereby. The result of the Court of Appeals' analytical process was its conclusion that, in enacting P.L. 280,

> "Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations." (532 F.2d at 662).

Petitioners contend that the de-

cision of the Court of Appeals is erroneous, and that this error is the direct result of two major defects in the analytical approach by which the decision was reached. Specifically, petitioners argue that the Court of Appeals initially erred in finding that P.L. 280 is ambiguous, thus necessitating use of the rule of statutory construction which requires that ambiguities in statutes pertaining to Indians shall be resolved in favor of the Indians. Petitioners, then argue that having improperly invoked this canon of constuction, the Court of Appeals proceeded to misconstrue both the legislative history of P.L. 280, as well as present federal Indian policy.

Petitioners further contend that the Court of Appeals compounded its misperception of present federal Indian policy by considering such present policy to be relevant to its construction of

P.L. 280. Petitioners are especially disturbed by the Court of Appeals' conclusion that courts

> "are not obligated in ambiguous circumstances to strain to implement a policy Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship." (532 F.2d at 663).

That the general approach and analytical process of, and the result reached by the Court of Appeals in this case is entirely correct, and that Petitioners' criticisms of that general approach, analytical process and result is totally incorrect, was effectively decided by the decision of the U.S. Supreme Court in Bryan v. Itasca County, _____U.S.L.W. ____, ____ U.S. ____, No. 75-5027 (Slip opinion, June 14, 1976).

In Bryan, the Supreme Court considered whether, P.L. 280, conferred upon a State or county jurisdiction to assess personal property taxes upon

an Indian owned mobile home located on an Indian reservation in a P.L. 280 state. The county contended that its personal property tax laws were "civil laws of [the] State... that are of general application to private persons or private property [,]" and that because these laws were not among those expressly excepted from the grant of jurisdiction under P.L. 280, such laws "shall have the same force and effect within such Indian country as they have elsewhere within the State...".

In reaching its decision, the Supreme Court found that P.L. 280 was indeed ambiguous, and that its interpretation required the use of the

> "'eminently sound and vital canon,' Northern Cheyenne Tribe v. Hollowbreast, ____ U.S. ____, ____ n.7, 44 U.S.L.W. 4655 (U.S. May 19, 1976). that 'statutes passes for the benefit of dependent Indian tribes are to be liberally construed, doubtful expressions being resolved in favor of the Indians.'" [Slip opinion, pp. 19-20].

To assist in construing the ambiguities in P.L. 280, the Supreme Court examined the legislative history of P.L. 280, as well as current federal Indian policy. The Court found that,

> "Piecing together as best we can the sparse legislative history of §4 [28 U.S.C. §1360], subsection (a) seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes; ... This construction finds support in the consistent and uncontradicted references in the legislative history to 'permitting' 'State courts to adjudicate' civil controversies arising on Indian reservations, H.R. Rep. No. 848, at 5, 6 (emphasis added), and in the absence of anything remotely resembling an intention to confer general state civil regulatory control over Indian reservations. In short, the consistent and exclusive use of the terms 'civil causes of action,' 'aris[ing] in,' 'civil laws of general application to private persons and private property,' and 'adjudicat[ion],' in both the Act and its legislative history virtually compels our conclusion that the primary intent of §4 was to grant jurisdiction over pri-

vate civil litigation involving reservation Indians in state court." [Emphasis in original]. Slip Opinion, pp. 11-12.

Having compared the legislative history and language of P.L. 280 with other termination acts emanating from the same Congress (see, e.g., footnote 15 of the Bryan slip opinion), having cited with approval the finding of the Court of Appeals herein that P.L. 280 was only one of many types of assimilationist legislation under active consideration in 1953, and having quoted with approval the Court of Appeals' statement that courts,

> "are not obliged in ambiguous instances to strain to implement a policy which Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship," [532 F.2d at 655],

the Supreme Court concluded that,

> "if Congress in enacting P.L. 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." (Slip opinion p. 18).

Conclusion

The result reached by the Court of Appeals in this case is completely consistent with the decision of the Supreme Court in Bryan v. Itasca County, supra, and in reliance upon virturally identical authorities. In reaching its decision in Bryan v. Itasca County, id., the Supreme Court heard and considered virtually all of the arguments made in support of the Petition herein, and rejected each of them. Petitioners have set forth no other arguments which could result in a reversal of the decision of the Court of Appeals herein, while being consistent with the decision in Bryan v. Itasca County, id.

Accordingly, the Petition should be denied.

Dated: July 16, 1976

Respectully submitted,

George Forman
Dennis R. Hoptowit
CALIFORNIA INDIAN
LEGAL SERVICES

Attorneys for Respondents

by: George Forman

APPENDIX A

25 U.S.C. § 1.

There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate.

25 U.S.C. § 1a.

For the purpose of facilitating and simplifying the administration of the laws governing Indian affairs, the Secretary of the Interior is authorized to delegate, from time to time, and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Indian Affairs, insofar as such powers and duties relate to action in individual cases arising under general regulations promulgated by the Secretary of the Interior pursuant to law. Subject to the supervision and direction of the Secretary, the Commissioner is authorized to delgate, in like manner, any powers and duties so delegated to him by the Secretary, or vested in him by law, to the assistant commissioners, or the officer in charge of any branch, division, office, or agency of the Bureau of Indian Affairs, insofar as such powers late to action in individual cases aris-

ing under general regulations promulgated by the Secretary of the Interior or the Commissioner of Indian Affairs pursuant to law. Such delegated powers shall be exercised subject to appeal to the Secretary, under regulations to be prescribed by him, or, as from time to time determined by him, to the Under Secretary or to an Assistant Secretary of the Department of the Interior, or to the Commissioner of Indian Affairs. The Secretary or the Commissioner, as the case may be, may at any time revoke the whole or any part of a delegation made pursuant to this section, but no such revocation shall be given retroactive effect. Nothing in this section shall be deemed to abrogate or curtail any authority to make delegations conferred by any other provision of law, nor shall anything in this section be deemed to convey authority to delegate any power to issue regulations.

25 U.S.C. § 2.

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

25 U.S.C. § 13.

The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of

the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

25 U.S.C. § 476.

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to orgaize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such

estimates to the Bureau of the Budget and the Congress.

42 U.S.C. § 2004(a).

(a) In carrying out his functions under this chapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized-

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

(b) The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under

under the jurisdiction of the Department of the Interior, and in Indian-owned lands that either are held by the Untied States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: Provided, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such beneficial owner to any such transfer or disposition shall first be obtained: Provided further, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

Public Law 92-18, 85 Stat. 40, May 25, 1971:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Second Supplemental

Appropriations Act, 1971") for the fiscal year ending June 30, 1971, and for other purposes, namely:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"Indian health services", $6,988,000;

Bureau of Indian Affairs

"Education and welfare services", $9,735,000;

Public Law 92-369, 86 Stat. 508, Aug. 10, 1972

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending June 30, 1973, and for other purposes, namely:

Bureau of Indian Affairs

Education and welfare services

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information

or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops, $301,056,000.

Construction

For construction, major repair and improvement of irrigation and power systems, buildings, utilities, and other facilities; acquisition of lands and interests in lands; preparation of lands for farming; and architectural and engineering services by contract, $55,960,000, to remain available until expended.

Kings County Ordinance No. 269.

Sec. 101. Purposes and objectives of the ordinance.

The zoning ordinance is adopted to preserve, protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. More specifically, the zoning ordinance is adopted in order to achieve the following objectives:

a. To provide a precise plan for the physical development of the county in such a manner as to achieve progressively the general arrangement of land uses depicted in the General Plan.

b. To foster a harmonious, convenient, workable relationship among land uses and a wholesome, serviceable and attractive living environment.

c. To promote the stability of existing land uses which conform with objectives and policies of the General Plan and to protect them from inharmonious influences and harmful intrusions.

d. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the county.

e. To promote the beneficial development of those areas which exhibit conflicting patterns of use.

f. To prevent excessive population densities and overcrowding of the land with structures.

g. To promote a safe, effective traffic circulation system.

h. To foster the provision of adequate off-street parking and truck loading facilities.

i. To facilitate the appropriate location of public facilities and institutions.

j. To protect and promote appropriately located agricultural, commercial, and industrial pursuits in order to preserve and strengthen its economic base.

k. To protect and enhance real property values.

l. To conserve the county's natural assets and to capitalize on the opportunities offered by its terrain, soils, vegetation and waterways.

m. To coordinate policies and regulations relating to the use of land with such policies and regulations of incorporated cities of the county in order to: facilitate transition from county to municipal jurisdiction that land which is first developed in an unincorporated area and is subsequently annexed to a city; foster the protection of farming operations in areas of planned urban expansion, and ensure unimpeded development of such new urban expansion that is logical, desirable and in accordance with objectives and policies of the General Plan.

Sec. 103. Components of the zoning ordinance.

The zoning ordinance of a zoning plan designating certain districts and regulations controlling the uses of land, the density of population, the uses and locations of structures, the height and bulk of structures, the open spaces about structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations requiring the provision of off-street parking and off-street loading facilities.

Sec. 107. Zoning administrator.

The Board of Supervisors of the County of Kings declares that there is a need for the office of Zoning Administrator to function in the County and hereby establishes such Office of Zoning Administrator to perform the duties and exercise the powers as prescribed in this ordinance and the Government Code in such a way as to promote the

public health, safety and welfare, to further the objectives of the zoning plan and to do substantial justice.

The Planning Director of the County of Kings shall be the Zoning Administrator. The Zoning Administrator may delegate any of the County Planning Staff to act in his behalf.

Sec. 402. AG General Agricultural District.

C. Permitted uses; administrative approval:

7. House trailer or coach as a guest house residence or farm employee housing incidental to a permitted conditional use for a maximum period of two (2) years.

I. Fences, walls and hedges:

Fences, walls and hedges exceeding six (6) feet in height shall be permitted except that no solid fence, wall or hedge shall exceed three (3) feet in height within an area of a corner lot, or a lot backing onto a street, described as follows: That area on the street side of a diagonal line connecting points, measured from the intersection corner, fifty (50) feet on a minor street side of the lot and seventy (70) feet on a major street side of a lot.

J. Yard requirements:

1. Front Yard: The minimum front yard shall be not less than fifty (50) feet except along those streets and highways where a greater setback is required by other ordinances of the

county, and further provided that the distance from the center line of a street to the rear of the required front yard shall not be less than eighty (80) feet.

K. Height of structures:

No limitation.

L. Distance between structures:

The minimum distance between a structure used for human habitation and a structure housing livestock or poultry shall be forty (40) feet.

M. Off-street parking and off-street loading facilities:

Off-street parking facilities and offstreet loading facilities shall be provided on the site for each use as prescribed in Article 15.

O. General provisions and exceptions:

All uses shall be subject to the general provisions and exceptions prescribed in Article 17.

Sec. 601. Purposes and application.

This district is intended primarily for application to those rural and urban areas of the county where it is necessary and desirable to provide permanent open spaces to protect natural watercourses, drainage basins and sloughs which are necessary to safeguard the health, safety and welfare of the people.

Sec. 602. Permitted uses.

A. Flood control channels; water pumping stations and reservoirs; irrigation ditches and canals and ditch and canal rights-of-way; settling and water conservation recharging basins; parkways.

B. Recreation areas, parks, playgrounds.

C. Incidental and accessory structures and uses located on the same site as a permitted use.

D. Signs, subject to the provisions of section 612 of this Article.

Sec. 603. Permitted uses; administrative approval.

None.

Sec. 604. Conditional uses; zoning board approval.

None.

Sec. 701. Purpose.

To provide living areas which combine certain of the advantages of both urban and rural location by limiting development to very low density concentrations of one-family dwellings and permitting limited numbers of animals to be kept for pleasure or hobbies, free from activities of a commercial nature.

Sec. 702. RRA Rural Residential Agricultural District.

C. Permitted uses; administrative approval:

The following uses may be permitted in accordance with the provisions of Article 18:

7. Accessory structures and uses located on the same site as a conditional use which has been approved by the board of zoning adjustment, except for those uses which are owned or operated by a public agency.

Sec. 703. RRE Rural residential estate district.

A. Application:

This district is intended primarily for application to subdivision of land in agricultural and scenic areas to:

1. Permit the opportunity of developing estate-type lots which, because of their size, cannot be economically accommodated within urban areas; and
2. To encourage the provision of estate-type lots as a subdivision of land which will assure the provisions of at least those minimum physical improvements necessary to protect the health, safety and general welfare of people living on estate-type lots or parcels.

Sec. 1501. Purposes and application.

In order to alleviate progressively or to prevent traffic congestion and shortage of curb spaces, off-street parking and off-street loading facilities shall be provided incidental to new land uses and major alterations and enlargements of existing land uses.

The number of parking spaces and the number of loading berths prescribed in this article or to be prescribed by the County Planning Commission shall be in proportion to the need for such facilities created by the particular type of land use. Off-street parking and loading areas are to be laid out in a manner which will ensure their usefulness, protect the public safety and, where appropriate, insulate surrounding land uses from their impact.

Sec. 1601. Home occupations.

B. Home occupations; rural:

Rural home occupations in Agricultural District shall comply with the following regulations:

1. A home occupation shall be independently operated and limited in employment to the residents of the property.

2. All structures used shall be non-commercial in appearance and shall be harmonious with the agricultural area.

3. There shall be no open storage of equipment or supplies, except when enclosed by a six (6) foot solid fence.

4. A home occupation shall not generate excessive truck or automobile traffic.

5. There shall be no sales of products or services not produced on the premises, except where the sale of such products is clearly secondary

6. The aggregate sign area shall be limited to fifty (50) square feet, with no individual sign exceeding thirty (30) square feet in area.

7. All additional points of access (to any street, road or highway) shall be determined by the Zoning Administrator with regard to the nature of the traffic circulation in the area.

Sec. 1709. Nonconforming uses and structures.

A. Purposes:

A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this ordinance but which, under this ordinance, does not conform with the use regulations for the district in which it is located. This section is intended to limit the number, extent, and duration of nonconforming uses and to serve their gradual elimination by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this ordinance and by probibiting their restoration after destruction.

A nonconforming structure is a structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance, does not conform with the standards of coverage, yard spaces, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. While permitting the use and maintenance of

nonconforming structures, this section is intended to limit the number and extent and duration of nonconforming structures and to service their gradual elimination by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this ordinance and by prohibiting their restoration after destruction.

C. Alterations and additions to nonconforming uses:

No structure, the use of which is nonconforming, shall be moved, altered or enlarged unless required by law or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use, except that a structure housing a nonconforming residential use located in an A, UR, RA, R or RM District may be moved, altered or enlarged, provided that the number of dwelling units is not increased.

No structure partially occupied by a nonconforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use.

No nonconforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site of another strucutre or site which did not occupy on the effective date of this ordinance or of the amendment thereto which caused it to become a nonconforming use or in such a way as to displace any conforming use occupying a structure or site.

L. Building permit:

Before a building permit shall

be issued for any building or structure proposed as part of the approved change of nonconforming use application, the Building Department shall secure written approval from the Zoning Administrator that the proposed building location is in conformity with the site plan and conditions approved by the Planning Commission or Board of Supervisors. Such written approval from the Zoning Administrator shall be submitted to the Building Department within twenty-four (24) hours following the request.

Before a building may be occupied, the Building Official shall certify to the Zoning Administrator that the site has been developed in conformity with the site plan and conditions approved by the Planning Commission or Board of Supervisors. Such certification shall be made within twenty-four (24) hours from the time of final building inspection.

Sec. 1801. Purpose.

The purpose of requiring administrative approval of certain enumerated uses is to enable the zoning administrator to determine whether or not the proposed use is in conformance with the intent and provisions of this ordinance.

Sec. 1802. Procedure.

A. An application for administrative approval shall be submitted to the zoning administrator. The application shall include a statement of the use proposed and a site plan in the same manner as prescribed in section 2102. The zoning administrator may require such other information as he deems nec-

essary from any applicant for administrative approval.

B. The zoning administrator shall review the proposed use and site plan to ascertain all facts pertinent to it and to ascertain that findings required can be made, and, in writing, shall state either approval or denial of the proposed use and shall also state the findings and reasons for such decision within ten (10) days, excluding Saturdays, Sundays and legal holidays, of the filing of the application.

C. The zoning administrator shall impose such conditions on the granting of the proposed use as he deems necessary in order to achieve the purposes of this ordinance.

Sec. 1803. Findings.

The zoning administrator may grant an application for administrative approval as the permit was applied for or in modified form, if, on the basis of the application and evidence submitted, he is able to make the following findings:

1. That the proposed use complies with all applicable provisions of this ordiance.
2. That the following are so arranged that traffic congestion is avoided and pedestrian and vehicular safety and welfare are protected and there will be no adverse effect on surrounding property:

(a) Facilities and improvements.
(b) Vehicular ingress, egress and internal circulation.
(c) Setbacks.
(d) Height of buildings.
(e) Location of service.
(f) Walls.
(g) Landscaping.

3. Proposed lighting is so arranged as to reflect the light away from adjoining properties.
4. Proposed signs will not, by size, location, color or lighting, interfere with traffic or limit visibility.
5. That any use involving a business, service or process not completely enclosed in a structure, when located on a site abutting on or across a street or an alley from an alley from a residential district, shall be screened by a solid fence or wall or a compact growth of natural plant materials not less than six (6) feet in height if the use is found to be unsightly.
6. That no process, equipment or materials will be used which, in the opinion of the zoning, administrator, will be objectionable to persons living or working in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt, refuse, water-carried wastes, noise, vibration, illumination, glare or unsightliness or to involve any hazard of fire or explosion.
7. That the proposed use and structure will be harmonious with existing structures and land in the vicinity.

Sec. 2101. Purposes and application.

The purpose of the site plan is to enable the zoning administrator to make a finding that the proposed development is in conformity with the intent and provisions of this ordinance and to guide the building department in the issuance of building permits. The provisions of this article shall apply to the following uses:

A. Any use listed within a particular zoning district as a permitted use subject to administrative approval.

Sec. 2102. Site plan.

A. The applicant shall submit three (3) prints of the site plan to the zonng administrator. The site plan shall be drawn to scale and shall indicate clearly and with full dimensions the following information:

1. Name and address of applicant.
2. Lot dimensions and legal description of property.
3. All buildings and structures: Location, elevation, size, height, proposed use.
4. Yards and space between buildings.
5. Walls and fences: Location, height and materials.
6. Off-street parking: Location, number of spaces and dimensions of parking area, internal circulation pattern.
7. Access-pedestrian, vehicular, service: Points of ingress and egress, internal circulation.
8. Signs: Location, size and height.
9. Loading: Location, dimensions, number of spaces, internal circulation.
10. Lighting: Location and general nature, hooding devices.
11. Street dedications and improvements.

12. Landscaping: Location and type.
13. Such other data as may be required to permit the zoning administrator to make the required findings.

Sec. 2104. Building permit.

Before a building permit shall be issued for any building or structure proposed as part of the approved site plan, the building department shall secure written approval from the zoning administrator that the proposed building location is in conformity with the site plan and conditions approved by the zoning administrator, planning commission or board of supervisors. Before a building may be occupied, the building official shall certify to the zoning administrator that the site has been developed in conformity with the site plan and conditions approved by the zoning administrator, planning commission or board of supervisors.

Sec. 2402. Duties of building official.

The Building Official shall be the official responsible for the enforcement of this ordinance. In the discharge of this duty, the Building Official shall have the right to enter on any site or to enter any structure for the purpose of investigation and inspection provided that the right of entry shall be exercised only at reasonable hours. The Building Official may serve notice requiring the removal of any structure or use in violation of this ordinance on the owner or his authorized agent, on a tenant, or on an architect, builder, contractor or other person who commits or participates in any violation. The Building Official may call upon the District Attorney to institute necessary legal proceedings to enforce the provisions of this ordinance, and the District Attorney is hereby authorized to institute appropriate actions to that end. The Building Official may call upon the Sheriff and his authorized agents to assist in the enforcement of this ordinance.

MODIFIED FINDINGS OF FACT
AND CONCLUSIONS OF LAW.

The above-entitled action came on regularly for hearing on October 9, 1973, on cross-motions for summary judgment or, in the alternative, plaintiffs' motion for preliminary injunction. George Forman, California Indian Legal Services, Berkeley, California, appeared for plaintiffs, and Larry G. McKee, Deputy County Counsel, Hanford, California, appeared for defendants. The Court having received and considered the pleadings, exhibits, affidavits, memoranda and arguments of the parties, and having determined that there is no genuine issue of material fact, makes the following findings of fact and conclusions of law:

1. The Santa Rosa Band of Indians occupies the Santa Rosa Rancheria in Kings County, California. The Rancheria consists of approximately 170 acres, legal title to which is held in trust for the exclusive use and benefit of the Band and its members by the United States of America. The United States acquired the lands of the Rancheria by a stipulated decree of the United States District Court for the then Southern District of California, No. B-66, February 28, 1921; by a deed from the Federal Land Bank of Berkeley, August 16, 1937; and by a judgment of the United States District Court for the then Southern District of California, No. 202 Civil, September 28, 1946.

2. The Santa Rosa Band of Indians is organized under 25 U.S.C. §476 (Indian Reorganization Act), and the governing body of the Band is recognized by the Secretary of the Interior.

3. The Band has brought this action for declaratory and injunctive relief on its own behalf and upon behalf of its members, to establish that officials of Kings County are without jurisdiction to enforce the Kings County Zoning Ordinance (No. 269), and other related County Ordinances on the Rancheria in such a manner as to hinder, impede, or interfere with either the provision of benefits and services to the Santa Rosa Rancheria or residents thereof by agencies of the Untied States, or the receipt of such federal benefits and services by the Rancheria or residents thereof.

4. Kings County is a governmental subdivision of the State of California, possessing such powers and jurisdiction over the lands and persons therein as are conferred by the laws and Constitution of the State of California. Charles Gardner is the Planning Director for Kings County, and has primary administrative responsibility for enforcing Kings County Ordinance No. 269, the County Zoning Ordinance.

5. The United States Bureau of Indian Affairs (B.I.A.), maintains a Housing Improvement Program for the purpose of alleviating distress of low-income Indians residing in sub-standard housing. This program is authorized by 25 U.S.C. §13, and funds for H.I.P. assistance are derived from Public Law 92-369 (86 Stat. 508, August 10, 1972). The B.I.A. has promulgated administrative criteria and guidelines for the

administration and provision of H.I.P. aervices.

6. In February, 1973, Mark Barrios and Pete Baga, residents of the Santa Rosa Rancheria and members of the Band, applied to the B.I.A. for H.I.P. assistance in procuring safe and comfortable housing for themselves and their respective families, by means of purchasing specific mobile homes. Both the Barrios and Baga families have been living in inadequate, sub-standard, unhealthy and crowded housing facilities. Neither family possesses financial resources to independently improve the inadequate housing and sanitation facilities which they presently utilize, and can improve their living conditions only with the assistance of housing and sanitation programs administered by the B.I.A. and the Indian Health.

7. The Barrios and Baga requests for H.I.P. assistance were evaluated by the B.I.A. pursuant to its administrative criteria and guidelines; Barrios and Baga were determined to be eligible for H.I.P. assistance, and the B.I.A. determined that the purchase of the particular mobile homes in question, to be located upon assignments of tribal land on the Rancheria, would comply with the standards and further the purposes of the H.I.P. program.

8. Upon this basis, the B.I.A. granted Barrios and Baga $3500 each, the maximum allowable for H.I.P. assistance for acquisition of new housing, in the form of U.S. Treasury checks payable directly to the vendor of the two mobile homes. The full purchase price of the Barrios mobile home is $6,189.75; the price of the Baga home is $7,140.00. The balance of the purchase price of each home is to be paid by the recipients

thereof.

9. Acting in coordination with the H.I.P. services provided to Barrios and Baga, under authority conferred generally by 42 U.S.C. §2001 et seq., and specifically by 42 U.S.C. §2004(a), the Indian Health Service (I.H.S.), an agency of the United States Public Health Service, Department of Health, Education and Welfare, is providing water and sanitation systems to the Barrios and Baga mobile homes, and is also upgrading the community water system of the entire Rancheria. Funds for these services were appropriated by Public Law 9218 (85 Stat. 40, May 25, 1971). The I.H.S. has made an assessment of the environmental impact of the installation of the water and sanitation systems on the Rancheria, and has determined that the installation and use of these systems would have no significant adverse effect upon the surrounding environment.

10. Kings County has attempted and is attempting to require plaintiffs Barrios and Baga to comply with its Zoning Ordinance and with its Building and Structures Ordinance as a precondition to utilization of the H.I.P. assisted mobile homes and I.H.S. water and sanitation facilities. Absent such compliance, the County would forbid the use of these facilities.

11. The Kings County Zoning Ordinance and the Building and Structures Ordinance have as their stated general purpose to preserve, protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare. The specific objectives of the Zoning Ordinance are:

a. to provide a precise plan for the physical development of the county in such a manner as to achieve progressively the general arrangement of land uses depicted in the General Plan.
b. To foster a harmonious, convenient, workable relationship among land uses and a wholesome, serviceable and attractive living environment.
c. To promote the stability of existing land uses which conform with objectives and policies of the General Plan and to protect them from inharmonious influences and harmful intrusions.
d. To ensure that public and private lands ultimately are used for the purposes which are most appropriate and most beneficial from the standpoint of the county.
e. To promote the beneficial development of those areas which exhibit conflicting patterns of use.
f. To prevent excessive population densities and overcrowding of the land with structures.
g. To promote a safe, effective traffic circulation system.
h. To foster the provision of adequate off-street parking and truck loading facilities.
i. To facilitate the appropriate location of public facilities and institutions.

j. To protect and promote appropriately located agricultural, commercial, and industrial pursuits in order to preserve and strengthen its economic base.
k. To protect and enhance real property values.
l. To conserve the county's assets and to capitalize on the opportunities offered by its terrain, soils, vegetation and waterways.
m. To coordinate policies and regulations relating to the use of land with such policies and regulations of incorporated cities of the county in order to: facilitate transition from county to municipal jurisdiction that land which is first developed in an unincorporated area and is subsequently annexed to a city; foster the protection of farming operations in areas of planned urban expansion, and ensure unimpeded development of such new urban expansion that is logical, desirable and in accordance with objectives and policies of the General Plan. (§101)

12. The Zoning Ordinance consists of:

"a zoning plan designating certain districts and regulations controlling the uses of land, the density of population, the uses and locations of structures, the height and bulk of structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations requiring the provision of off-street parking and off-street loading facilities."
(§103).

13. The area of Kings County in which the Santa Rosa Rancheria is located is designated as a General Agricultural District, pursuant to Zoning Ordinance §402. Under this designation, the use of a mobile home as a residence is a permitted use contingent upon securing the administrative approval of the County Planning Director, acting as Zoning Administrator; such approval may be granted for a maximum of two years, upon each application.

14. In order to obtain administrative approval under the Zoning Ordinance, it is necessary for an applicant therefore to pay a fee of $30.00 for an environmental impact assessment, to be performed by the county. Under Zoning Ordinance §2101 et seq., the applicant must submit for approval a comprehensive site plan in triplicate, showing in detail how the site will be used; approval of the site plan is contingent upon compliance with standards and requirements for landscaping, street dedications, yard size, parking facilities, and other factors.

15. Under the Building and Structures Ordinance (Chapter 5, Kings County Code), permits are required for water and sanitation facilities such as those to be provided by the I.H.S., and for the connection of electric power. Fees charged by the County for these permits total $19.20 for each mobile home involved herein.

16. The application of County

Zoning and Building Ordinances to housing and improvements thereto provided to reservation Indians by the B.I.A. and the I.H.S. under programs by which said agencies are exercising authority and performing responsibilities conferred upon them by Congress, and using funds appropriated therefor, interferes with the provision of these services by said agencies and with the receipt of such services by the reservation Indians intended by Congress to benefit therefrom. Compliance with County Zoning and Building Ordinances for such housing and improvements thereto would increase the cost of such services, prevent the provision of services on a uniform statewide basis, and unduly restrict the discretion of these federal agencies in exercising the authority and meeting the responsibility conferred upon them by Congress.

17. The following conclusions of law, insofar as they be construed as findings of fact, are so found by this Court to be true in all respects.

CONCLUSIONS OF LAW

1. The foregoing findings of fact, insofar as they be construed as conclusions of law, shall be considered as conclusions of law.

2. This action arises under the Constitution and laws of the United States, and is brought by an Indian tribe with a governing body recognized by the Secretary of the Interior. This Court has jurisdiction of this action under 28 U.S.C. §1362, and the Band possesses sufficient interest in the subject matter of the action to give it standing to maintain this suit.

Sierra Club v. Morton, 405 U.S. 727 (1972); Fort Mojave Tribe v. La Follette, 478 F.2d 1016 (9th Cir. 1973).

3. 25 U.S.C. §13 confers upon the B.I.A., acting under the supervision of the Secretary of the Interior, the responsibility for directing, supervising and expending such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States. The B.I.A. is authorized to expend appropriated funds for the purpose of general support, relief of distress, conservation of health of Indians, development of water supplies, and repair and improvement of buildings and facilities.

4. Under Public Law 92-369 (86 Stat. 508, August 10, 1972), Congress appropriated funds for use, inter alia, in providing and improving housing facilities for Indians. The B.I.A. Housing Improvement Program utilizes funds appropriated by P.L. 92-369 in a manner consistent with the purposes of that Act. The B.I.A.'s expenditure of P.L. 92-369 funds for H.I.P. assistance is within the authority and in fulfillment of the responsibility conferred upon it by 25 U.S.C. §13.

5. The B.I.A. has adopted valid and comprehensive administrative criteria and guidelines for the administration of H.I.P. funds. The evaluation and receipt of applications for H.I.P. assistance and the provision of such assistance is a valide exercise of the authority conferred upon the B.I.A. by 25 U.S.C. §13.

6. No federal statute requires that the provision to or receipt by

Indians of B.I.A. services pursuant to 25 U.S.C. §13 be conditioned upon compliance with State or local Zoning or Building Ordinances, or subjects the authority of the B.I.A. to make a determination as to what type of housing best meets the needs of particular Indians in particular circumstances, or the right of Indians to receive same, to control by State or local governments.

7. The I.H.S. is providing and upgrading water and sanitation systems on the Santa Rosa Rancheria under the authority of 42 U.S.C. §2004(a), utilizing funds appropriated by P.L. 92-18. These systems are being constructed in conformity with standards promulgated by the I.H.S. The environmental assessment performed by the I.H.S. is required by the National Environmental Policy Act, 42 U.S.C. §4321. Davis v. Morton 469 F.2d 592 (9th Cir. 1972).

8. No federal statute requires that the provision to or receipt by Indians of I.H.S. water and sanitation services pursuant to 42 U.S.C. §2004(a) be conditioned upon compliance with State or local Zoning Building Ordinances, or subjects the authority of the I.H.S. to provide such services, or the right of Indians to receive same, to control by State or local governments.

9. The deed and court decrees by which the United States obtained and holds title to the lands of the Santa Rosa Rancheria in trust for the Band are agreements by which the United States holds, and is obligated to protect and maintain said lands for the use, benefit, residence and sustenance

of the Band. 25 U.S.C. §13, 42 U.S.C. §2004(a), P.L. 92-369 and P.L. 92-18 are part of a statutory scheme to effectuate and further these agreements. The Kings County Zoning Ordinance and Building and Structures Ordinance are land use regulations the enforcement of which is inconsistent with these agreements and the statutes enacted in furtherance thereof.

10. The B.I.A. and the I.H.S. are involved in the provision of the housing, water and sanitation services and facilities at issue herein to such a significant degree that the application and enforcement of local zoning and building ordinances would significantly interfere with, burden and hinder these agencies in the performance of their lawful functions. Local laws may not be enforced in such a manner as to interfere with, burden or hinder federal agencies in the performance of lawful functions. Oklahoma City v. Sanders, 94 F.2d 323 (10th Cir. 1938); United States v. City of Chester, 144 F.2d 415 (3rd Cir. 1944); United States v. Philadelphia, 147 F.2d 291 (3rd Cir. 1945); City of Birmingham v. Thompson, 200 F.2d 505 (5th Cir. 1942).

11. Where federal agencies act within their authority in providing facilities and services to Indians pursuant to a federal statutory scheme, the United States has so occupied the field of agency activity as to exclude the application of non-federal regulations which would otherwise control such facilities or services. The statutory scheme need not even be expressed by a specific statute or regulation. Warren Trading Post v. Arizona State

Tax Commission, 380 U.S. 685 (1965); Cramer v. United States, 261 U.S. 219 (1923); see also, Rice v. Sante Fe Elevator Corp., 331 U.S. 218 (1947). In this case, the authorization and appropriation Acts under which the services are being provided demonstrate an express Congressional intent to preempt the field of regulating federally provided or assisted housing, water and sanitation facilities and services for Indians residing upon Indian reservations.

12. Under 18 U.S.C. §1162 and 28 U.S.C. §1360 (P.L. 280), the State of California and its political subdivisions are without jurisdiction to regulate the use of Indian trust land in a manner inconsistent with any federal statute, agreement or regulation promulgated pursuant thereto. Because the Kings County ordinances at issue herein are inconsistent with federal statutes and agreements, P.L. 280 does not authorize the enforcement of these ordinances against H.I.P. assisted homes or water and sanitation systems provided to the residents of the Santa Rosa Rancheria by the I.H.S.

13. P.L. 280 makes applicable only laws of the State of California. The County ordinances at issue herein are not laws of the State within the meaning of P.L. 280. Donelon v. New Orleans Terminal Co., 474 F.2d 1108 (5th Cir. 1973). Thus, Kings County is without jurisdiction to enforce these Ordinances on the Santa Rosa Rancheria.

14. 25 U.S.C. §231 grants State officials authority to inspect health conditions, but does not give authority to enforce health regulations. The

ordinances at issue herein are health and safety regulations. See, e.g. Zoning Ordinance §101. Thus, because County officials are not State officials within the meaning of that section, 25 U.S.C. §231 does not confer upon officials of Kings County any jurisdiction to enforce the regulations at issue herein.

15. There being no genuine issue of material fact, plaintiffs are entitled to the entry of a summary declaratory judgment that Kings County is without jurisdiction to enforce its Zoning or Building and Structures Ordinance against housing or water and sanitation facilities provided to Indian Reservation residents under programs for assistance administered by the United States Bureau of Indian Affairs or the United States Indian Health Service.

16. Plaintiffs are entitled to a permanent injunction restraining defendants from enforcing the Kings County Zoning or Building and Structures Ordinance against housing or water and sanitation facilities provided to Indian Reservaion residents under programs for assistance administered by the United States Bureau of Indian Affairs or the United States Indian Health Service.

17. Plaintiffs are entitled to their costs of suit.

DATED: February 4, 1974

/s/ M.D. Crocker
United States District Judge

JUDGMENT

This matter came on for hearing on October 9, 1973, on cross-motions for summary judgment, or, in the alternative, plaintiffs' motion for preliminary injunction.

The Court, Honorable M.D. Crocker, U.S. District Judge, presiding, having tried the issues and having heretofore made and filed its Findings of Fact and Conclusions of law, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That defendant Kings County and all agencies and employees thereof, is without jurisdiction to enforce the Kings County Zoning Ordinance, or any other ordinance, upon the lands or against the residents of the Santa Rosa Rancheria, in such a manner as to hinder, impede, or interfere with in any manner whatsoever the provision of services to the Rancheria or any resident thereof by the Bureau of Indian Affairs or any other federal agency pursuant to any Act of Congress or regulation promulgated pursuant thereto;

2. That grants of funds to Indian Reservation residents by the Bureau of Indian Affairs under its Housing Improvement Program for the purpose of acquiring, repairing or improving housing facilities, and Indian Health Service projects to provide water and sanitation

facilities for Reservation Indians, constitute the provision of services which said agencies are authorized and obligated to provide under 25 U.S.C. §13 and P.L. 92-369 (B.I.A.), 42 U.S.C. §2001 et seq., and P.L. 92-18 (I.H.S.), and any alteration, repair, maintenance, or acquisition of such facilities provided by or with the assistance of these agencies pursuant to said statutes is exempt from County regulation;

3. That Kings County, Charles Gardner, the Kings County Planning Commission, and any and all other County agencies and employees thereof, and any and all persons working in concert with them or under their control, are permanently enjoined from:

a. impeding, hindering, or interfering with or attempting to impede, hinder, or interfere with, in any manner whatsoever, the provision of services to the Santa Rosa Rancheria or any resident thereof by the Bureau of Indian Affairs or any other federal agency under any Act of Congress or regulations promulgated pursuant thereto;

b. enforcing or attempting to enforce compliance with any County ordinance in such a manner as to impede, hinder, obstruct, interfere with, or add expense or inconvenience to the alteration, repair, maintenance, or acquisition of housing facilities or appurtenances there-

to, and utilization thereof, by any resident of the Santa Rosa Rancheria, when such alteration, repair, maintenance, or acquisition is financed, in whole or in part, with funds provided by the Bureau of Indian Affairs or any other federal agency under any Act of Congress or regulations promulgated pursuant thereto;

4. That plaintiffs be awarded their costs of suit.

DATED: December 4, 1973

/s/ M.D. Crocker
United States District Judge

No. 75-1674

In the Supreme Court of the United States

OCTOBER TERM, 1976

KINGS COUNTY, ET AL., PETITIONERS

v.

SANTA ROSA BAND OF INDIANS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1674

KINGS COUNTY, ET AL., PETITIONERS

v.

SANTA ROSA BAND OF INDIANS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the Court's order of October 4, 1976, inviting the Solicitor General to express the views of the United States. The United States opposes the petition for a writ of certiorari.

STATEMENT

The Santa Rosa Band is an Indian tribe organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, 987, 25 U.S.C. 476. The Band occupies the Santa Rosa Rancheria (Reservation) in Kings County, California. Legal title to the Rancheria is held in trust by the United States for the benefit of the Santa Rosa Band. See 25 U.S.C. 465 (Pet. App. 33).

The individual respondents, Barrios and Baga, are members of the Band living within the Rancheria. They and

their families had been "living in inadequate, sub-standard, unhealthy and crowded housing facilities" (Resp. App. 49)[1]. In early 1973, Barrios and Baga applied to the Bureau of Indian Affairs (BIA) for financial assistance in purchasing mobile homes to be placed on the Rancheria (*ibid.*). The BIA is authorized to provide such assistance under its Housing Improvement Program (HIP),[2] which is designed to assist low-income Indians living in substandard housing. Finding Barrios and Baga eligible for assistance, the BIA granted each $3,500 to be used for purchasing the mobile homes, which cost more than $6,000 apiece (*ibid.*).

After Barrios and Baga purchased their homes, the Indian Health Service (IHS), an agency within the Department of Health, Education and Welfare,[3] planned to provide them with water and sanitation services (*id.* at 50). IHS is also improving the community water system for the entire Rancheria.[4]

The Rancheria is considered a General Agricultural District under Section 402 of the County Zoning Ordinance (Kings County Ordinance No. 269) (Resp. App. 35). Under Section 402C(7), a mobile home in such an area may, upon

[1]"Resp. App." refers to the appendices contained in Respondents' Brief in Opposition. The Modified Findings of Fact and Conclusions of Law of the district court are set forth at Resp. App. 47-59.

[2]HIP assistance is authorized by the Act of November 2, 1921, 42 Stat. 208, 25 U.S.C. 13 (Resp. App. 25-26), and is funded through appropriations under the Act of August 10, 1972, 86 Stat. 508 (Resp. App. 31-32).

[3]IHS services are provided pursuant to Section 7 of the Act of August 5, 1954, as added, 73 Stat. 267, 42 U.S.C. 2004a (Resp. App. 28-30).

[4]The funds for these services were appropriated in P.L. 92-18 (85 Stat. 40). Upon evaluating the environmental effect of installing water and sanitation systems on the Rancheria, IHS determined that there would be no significant adverse impact (Resp. App. 50).

the approval of county officials, be used as "a guest house residence or farm employee housing * * * for a maximum period of two (2) years" (*ibid.*). County officials informed respondents that in order to obtain administrative approval, each had to submit an application to the County Zoning Administrator, accompanied by a comprehensive site plan and a fee of thirty dollars to defray the Planning Department's expense in preparing a required environmental impact report (*id.* at 53). Before approval is granted, the Administrator must decide that the proposed use is in conformity with the other provisions and objectives of the Zoning Ordinance. Section 1803, Kings County Ordinance No. 269 (Resp. App. 43-44).

Barrios and Baga were also advised that the County Building Code required inspections and permits for utility hookups and for the plumbing work the IHS planned to perform; these permits cannot be obtained without the payment of fees of $19.50 for each mobile home (Pet. 4-5; Pet. App. 3). Barrios and Baga have not paid the fees.

The Band, as well as Barrios and Baga individually, brought suit in the United States District Court for the Eastern District of California for declaratory and injunctive relief to restrain enforcement of the relevant county ordinances insofar as they interfered with provision of services to the Band and its members by the BIA and the IHS. The district court granted plaintiffs' motion for summary judgment on October 11, 1973, holding that under Public Law 280[5] the County had no jurisdiction to enforce the county ordinance on Indian trust land (Resp. App. 58).

[5]Sections 2 and 4 of the Act of August 15, 1953, 67 Stat. 588, 589, 18 U.S.C. 1162, 28 U.S.C. 1360; Act of April 11, 1968, Title IV, 82 Stat. 78 *et seq.*, 25 U.S.C. 1321 *et seq.* Section 4 of Public Law 280, codified as 28 U.S.C. 1360, is set forth at Pet. App. 29-30.

The court of appeals affirmed. The court ruled that Public Law 280 does not confer jurisdiction upon a county to enforce its land use ordinances on Indian trust lands and that the Kings County zoning ordinances and building codes in question were therefore not applicable to the Band or its members. In reaching its decision, the court relied upon four separate and independent grounds:

1. The county ordinances in question are not, as Section 4 of Public Law 280, 28 U.S.C. 1360(a), requires, "civil laws of [the] State * * * that are of general application * * * within the State * * *."

2. The States are precluded by Section 4 of Public Law 280, 28 U.S.C. 1360(b), from regulating the use of Indian trust property "in a manner inconsistent with any Federal * * * statute or with any regulation made pursuant thereto * * *," and the ordinances in question are inconsistent with the regulations set forth at 25 C.F.R. 1.4.

3. Application of the ordinances to such property is contrary to the explicit provision in 28 U.S.C. 1360(b) stating that the statute does not authorize the "encumbrance" of Indian trust property.

4. Application of the ordinances to respondents would be inconsistent with those federal statutes authorizing the BIA and IHS to provide housing and sanitation aid to the Band.

The court of appeals vacated a portion of the district court's order, which it found to be overbroad, and remanded the case for the fashioning of a new order consistent with its opinion (Pet. App. 26-27).

ARGUMENT

This Court has recognized in numerous decisions that Indians traditionally have been free from state jurisdiction and control. In general, state laws do not apply to tribal

Indians on Indian reservations unless Congress has expressly provided otherwise. *Bryan* v. *Itasca County*, No. 75-5027, decided June 14, 1976, slip op. 2-3, n. 2, and cases there cited. The Court therefore will not infer from ambiguous statutory language that Congress intended to surrender federal control over Indian reservations, thereby allowing the State to treat the Indians living there as part of the general community. *Bryan* v. *Itasca County, supra,* slip op. 18-19, and cases there cited; see also *Kennerly* v. *District Court of Montana,* 400 U.S. 423, 424, n. 1, 427.

1. Petitioners contend that Public Law 280, 67 Stat. 589, 28 U.S.C. 1360(a),[6] conferred jurisdiction on the county government to apply its local zoning regulations to property belonging to Indians, located within the boundary of the Indian reservation and held in trust by the United States. We believe that this contention is foreclosed by *Bryan* v. *Itasca County, supra,* decided after the court of appeals rendered its decision in this case.[7]

In *Bryan*, as in this case, a county government attempted to apply its laws with respect to a tribal Indian's mobile home located in a reservation on land held in trust by the

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[6]The Act originally applied only within the States of California, Minnesota, Nebraska, Oregon and Wisconsin. It permitted other States, by subsequent affirmative action, also to assume jurisdiction under its provisions. The consent of the Indians affected was not required. Public Law 280, 67 Stat. 590, Sections 6 and 7. In 1968, the Act was amended to provide that thereafter a State could assume the jurisdiction authorized by the Act only "with the consent of the * * * tribe, occupying the particular Indian country" affected, in the form of a majority vote of the enrolled adult Indians affected. 82 Stat. 78, 79, 80, 25 U.S.C. 1321(a), 1322(a), 1326.

[7]The petition for certiorari was filed on May 18, 1976, before the *Bryan* decision was rendered. Petitioners subsequently filed a supplemental brief on August 2, 1976, in which they discussed the *Bryan* decision.

United States. The county, like the county here (Pet. 15-22), relied for its authority on Section 4 of Public Law 280, 28 U.S.C. 1360(a), which provides in part that "those civil laws of [the State of California] that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State * * * ." The Court in *Bryan*, after considering this language and the history surrounding it, concluded that "the primary intent of § 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court." *Bryan* v. *Itasca County, supra,* slip op. 11.[8] The Court further noted that had Congress desired to go further and "confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." *Id.* at 17.

The only difference between *Bryan* and the present case is that in *Bryan* the county sought to collect personal property taxes from the Indians, while here the county seeks the Indians' compliance with local zoning restrictions. Public Law 280, however, admits of no distinction between county rezoning laws and county laws imposing personal property taxes; the statute confers no authority on local governments to require reservation Indians to comply with either. Indeed, the Court in *Bryan* cited the opinion of the court of appeals in this case in support of its decision that Public Law 280 did not confer "upon state and local governments general civil regulatory control over reservation Indians." *Bryan* v. *Itasca County, supra,* slip op. 14, 15, n. 14.

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[8]The Court noted that the legislative history of Public Law 280 contained nothing "remotely resembling an intention to confer general state civil regulatory control over Indian reservations." *Id.* at 10-11.

2. Petitioners offer no reasons why Congress, although not intending Public Law 280 to grant States civil regulatory authority over reservation Indians, did intend to allow local governments to regulate the use of reservation land. Rather, petitioners argue that the Court in *Bryan* misconstrued 28 U.S.C. 1360(a) (Pet. Supp. Brief, p. 2.)

The report of June 29, 1953, from the Secretary of the Interior to the Chairman of the House Committee on Interior and Insular Affairs, upon which petitioners rely for their argument, does not support the weight they attach to it. In that report, the Secretary stated his view, in language quoted by petitioners (Pet. Supp. Brief, p. 6), that—

> the effect of [Public Law 280] would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as those laws are of general application to private persons or private property.

The Secretary's report, of course, scarcely demonstrates what Congress intended; in any event, the Secretary's statement is consistent with the Court's view in *Bryan* that 28 U.S.C. 1360(a) concerns the law to be applied in civil litigation in state courts. The report did not indicate that the revised bill would, as petitioners put it, "allow the States to apply *all* their civil laws, including regulatory laws, on Indian reservations" (Pet. Supp. Brief, p. 6, petitioners' emphasis). Rather, the Secretary indicated, in language quite similar to that in 28 U.S.C. 1360(a), that the bill, would, as the Court found in *Bryan*, "authorize * * * application by the state courts of their rules of decision to decide such disputes" (slip op. 10).

Moreover, while petitioners make much of the Secretary's proposed revisions of the draft bill (Pet. Supp. Brief, pp. 3-9), they ignore the Secretary's statement (App. to Pet. Supp. Brief, p. 3) that, with one exception not relevant here, none of his proposals represented a "major substantive difference" with the Committee version of the bill. The effect of the Committee version, as the Secretary had previously noted (*id.* at 1), was to "permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved." Thus, the proposed revisions hardly support the contention that state regulatory laws were to apply with full force to Indian reservations.[9]

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[9]Even if Public Law 280 confers civil regulatory authority on the State, it does not do so for political subdivisions of the State. Public Law 280 makes applicable only "those civil laws of such State or Territory that are of *general application,*" 28 U.S.C. 1360(a) (emphasis added), and 28 U.S.C. 1360(c) preserves the authority of tribal ordinances and customs not inconsistent with *state* civil laws without mentioning county or municipal laws. Since municipal or county laws are not state laws of general application, the Act does not authorize application of county zoning laws within reservations in respect to Indian property. Cf. *Moody* v. *Flowers,* 387 U.S. 97, 101.

Moreover, as the court below observed (Pet. App. 14), tribal governments under the statute are "more or less the equivalent of a county or local government in other areas within the state * * *." They have the authority to impose their own restrictions on land use within their reservations. Cf. *Morris* v. *Hitchcock,* 194 U.S. 384.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1976.

DOJ-1976-12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, *et al.*,
Plaintiffs and Respondents,

vs.

KINGS COUNTY, *et al.*,
Defendants and Petitioners.

Petitioner's Response to Memorandum for the United States as Amicus Curiae

LARRY G. McKEE
County Counsel
Kings County Courthouse
Hanford, California 93230

RODERICK WALSTON
Special Deputy County Counsel
6000 State Building
San Francisco, California 94102
Tel.: (415) 557-3920

Attorneys for Defendants and Petitioners

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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INTRODUCTION

We file this response to the Solicitor General's Memorandum for the United States as Amicus Curiae (hereinafter "Solicitor General's Memorandum"), opposing certiorari. The Solicitor General's Memorandum was submitted pursuant to the Court's invitation of October 4, 1975.

ARGUMENT

The Solicitor General would simply brush under the rug the official report of the Department of the Interior on the PL 280 legislation, a report appended to our supplemental brief. This report has never been previously called to this

Court's attention. Indeed, the report lay undiscovered for twenty-three years in the files of the House Committee on Interior and Insular Affairs, until unearthed by the petitioner in its research following this Court's opinion in *Bryan v. Itasca County,* No. 75-5027, decided June 14, 1976.

As the Court observed in the *Bryan* decision, *supra,* slip op., 9 n. 9, the only legislative history brought to the Court's attention was an unpublished transcript of congressional hearings. This transcript was originally produced by the Solicitor General in his brief in *Tonasket v. Washington,* 411 U.S. 451 (1973), which, like *Bryan,* was a tax case.

The apparent lack of legislative history also heavily influenced a law review article cited with approval in the *Bryan* decision, *supra,* slip op., 10 n. 10. See Israel & Smithson, "Indian Taxation, Tribal Sovereignty and Tribal Development," 49 N.D.L.Rev. 267, 292 n. 96.a (1973). The authors were aware only of the materials that had been produced by the Solicitor General in the *Tonasket* case. *Ibid.*

The parties in the *Bryan* case, as well as the United States as amicus, also cited no legislative history in their briefs to the Court, other than the transcript produced by the Solicitor General in the *Tonasket* case.

Thus, no one involved in the *Bryan* case was aware of the newly-discovered report of the Department of the Interior, not the Court, the parties, the United States or the commentators. The existence of this report was apparently overlooked by the Solicitor General in his research into the legislative history files on PL 280. It is perhaps understandable that the Solicitor General now seeks to downplay the significance of the report, for it is at odds with the theory that PL 280 fails to give the states civil

regulatory authority over Indian reservations, a theory of which the Solicitor General has been a leading exponent.[1]

Further, the Solicitor General's sketchy treatment of the report of the Department of the Interior is far from persuasive. First, the Solicitor General argues that the report "scarcely demonstrates what Congress intended." Solicitor General Memorandum, 7. However, since Congress adopted the very language that was submitted by the Secretary in his report, the report is at least as relevant an indication of the congressional mind as the hearing transcript which the Solicitor General produced in the *Tonasket* and *Bryan* cases, and on which the Court relied so heavily in the latter case.[2]

Second, the Solicitor General argues that the Secretary, in his report, meant only to refer to state decisional law, not to other types of state laws. Solicitor General's Memorandum, 7. However, no such distinction appears in the report. Also, the Solicitor General's argument is inconsistent with the legislative history of similar legislation applicable to the Agua Caliente reservation, 63 Stat. 704 (1949), discussed at pages 7-8 of our supplemental brief. The Solicitor General's argument is also inconsistent with the legislative history of the subsequent Arizona Leasing Act, 25 U.S.C. §§ 416-416j, discussed at page 10 of our supplemental brief. The Solicitor General fails to respond to

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1. See, *e.g.,* Memorandum for the United States as Amicus Curiae in *Bryan v. Itasca County,* No. 75-5027, October Term, 1975, at 10.

2. We do not want to be misunderstood as suggesting that the hearing transcript is not relevant. Nor do we want to be misunderstood as suggesting that we believe that the newly-discovered report of the Department of the Interior would compel a different result from that reached in the *Bryan* decision. To the contrary, we stated at page 2 of our supplemental brief that the *Bryan* decision is fully sustainable without venturing into the thicket of state civil regulatory jurisdiction.

our analysis of the legislative history applicable to either of the latter acts.

Finally, even if the *Bryan* analysis is correct, it does not apply in the pending case, or in most other cases involving the applicability of local zoning ordinances in California. In *Bryan*, the Court concluded that, on the basis of a lack of legislative history, PL 280 does not authorize state or local agencies to apply their *civil* regulatory laws on Indian reservations. The Court specifically noted, however, that state *criminal* laws are applicable on Indian reservations under that law. Slip op., 6. In fact, most local agencies in California have provisions in their zoning ordinances that make it a misdemeanor for a person to violate the zoning ordinances; such a provision is found, in fact, in the zoning ordinances of Kings County in this case.[3] Thus, the plaintiffs, in violating Kings County's zoning ordinances, are in violation of the county's criminal ordinances, not its civil ordinances. The *Bryan* analysis, even if correct, is thus inapplicable here.

Indeed, the *Bryan* analysis raises larger questions concerning the extent of state and local regulatory control over Indian reservations. Specifically, does a state law, regulating conduct that is not conventionally criminal in nature, become criminal for purposes of the *Bryan* analysis if criminal sanctions are imposed on those who engage in the conduct? If so, what is to prevent state or local agencies from overcoming the effect of the *Bryan* decision by simply

3. Section 2403 of the Zoning Ordinance of Kings County, adopted April 7, 1964, makes it a misdemeanor for any person to violate the county's zoning ordinances, and provides that any person who violates the ordinances shall be subject to a fine not to exceed $500 or imprisonment for a period not to exceed six months, or both.

imposing criminal sanctions against those who violate state or local laws that are otherwise civil in nature? These questions were raised at page 13 of our supplemental brief, but the Solicitor General failed to respond to them. These questions will surely haunt state and local agencies that are called on to apply the *Bryan* decision, and thus should be resolved by this Court, even if it believes that the *Bryan* analysis is correct.

CONCLUSION

To the extent that the Court in the *Bryan* case examined PL 280 in a non-tax context, its analysis was *dictum*. The Court now has before it, for the first time, a case that squarely presents the scope of state regulatory jurisdiction over Indian reservations under PL 280. The Court also has before it, for the first time, materials that bear upon the legislative history of that act, materials that have not been previously examined by the courts. In the end, the Court may or may not share our view of the meaning and weight to be ascribed to these newly-discovered materials. It is submitted, however, that the question is of sufficient importance to be determined after opportunity for full briefing and argument, rather than within the constructed limits afforded a petition for certiorari.

The issue presented by the Court's analysis of the *Bryan* decision was not presented to the court below. The lower court reached its result by an analysis of other issues, an analysis which we believe to be erroneous. Those other issues are also worthy of consideration by this Court, for,

although they have been considered by many lower federal courts, they have yet to be considered by this Court.

Respectfully submitted,

LARRY G. MCKEE
County Counsel
Kings County Courthouse
Hanford, California 93230

RODERICK WALSTON
Special Deputy County Counsel
6000 State Building
San Francisco, California 94102
Tel.: (415) 557-3920

Attorneys for Defendants and Petitioners

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, et al.,
Plaintiffs and Respondents,

VS.

KINGS COUNTY, et al.,
Defendants and Petitioners.

BRIEF OF THE HUMBOLDT COUNTY COUNSEL, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA, AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

RAYMOND W. SCHNEIDER,
County Counsel, County of Humboldt,
Humboldt County Courthouse,
Eureka, California 95501,
JOHN L. COOK,
Deputy County Counsel, County of Humboldt,
Humboldt County Courthouse,
Eureka, California 95501,
Telephone: (707) 445-7236,
Attorneys for Amicus Curiae.

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INTEREST OF AMICUS CURIAE COUNTY OF HUMBOLDT STATE OF CALIFORNIA

The County of Humboldt, State of California is a general purpose political subdivision of the State of California. The County of Humboldt has a vital interest in the issues raised in the decision of the Ninth Circuit Court of Appeals in *Santa Rosa Band of Indians v. Kings County* because the decision, in effect, precludes the application of Humboldt County Ordinances and certain State laws which the County

is charged with enforcing in "Indian country"[1] within the County of Humboldt. The largest Indian reservation in the State of California, the Hoopa Valley Indian Reservation, and numerous Indian rancherias are within the territory of the County of Humboldt. The County of Humboldt is currently litigating its right to enforce County building and zoning ordinances and other ordinances together with the California Environmental Quality Act, Cal. Public Resources Code § 21000 et seq., within the Hoopa Valley Indian Reservation. *United States v. County of Humboldt,* No. C-74-2526 RFP (N.D. Cal.).

The questions presented in the instant case are a matter of continuing importance to the County of Humboldt. The Hoopa Valley Indian Reservation is in excess of several hundred square miles. Pursuant to Federal policy, much of the land within the Hoopa Valley Indian Reservation has been freed of its trust purposes by patents issued by the United States Government. Patented or nontrust lands are owned by non-Indians as well as Indians. The result of this Federal policy may be best described as a random checkerboard of trust and nontrust lands. The squares of the checkerboard may be as small as lots within a subdivision. Another result of this Federal policy is that there are more non-Indians (2,742) than Indians (1,500) residing on the Hoopa Valley Indian Reservation.

The current state of governmental jurisdiction on the reservation is in a state of confusion mainly due

[1]"Indian Country" is defined at 18 U.S.C. § 1151.

to varying interpretations of Public Law 83-280. (Formerly 28 U.S.C. § 1360 re-enacted without relevant change at 25 U.S.C. § 1322.) The County of Humboldt is vested with jurisdiction over the Reservation by the State of California to the extent that the State has jurisdiction, see *Moe v. Confederated Salish and Kootenai Tribes,* ..... U.S. ....., 44 U.S.L.W. 4535 (U.S. Apr. 27, 1976); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 36 L. Ed. 2d 114, 93 S. Ct. 1267 (1973), and by the Federal Government pursuant to Public Law 83-280. Several Indian tribes reside upon the Hoopa Valley Indian Reservation; however, only one (the Hoopas) have established a governing body recognized by the Bureau of Indian Affairs. The Bureau of Indian Affairs views the governing body of the Hoopa Valley Tribe as functioning only within a portion of the Reservation. Further, the Bureau recognizes the jurisdiction of the governing body of the Hoopa Valley Tribe to be limited to Hoopa Indians and Indian trust properties held in trust for the Hoopa Tribe.

The United States Government owns land within the Reservation and has placed management responsibilities for the Reservation in the Bureau of Indian Affairs. The Bureau of Indian Affairs takes the position that it has neither jurisdiction over non-Indians nor management responsibilities with respect to patented non-trust lands. The Bureau also asserts that it has neither jurisdiction over Indians living upon patented property within the Reservation nor jurisdiction over the use of their property.

The Bureau's restricted view of its responsibilities on the Hoopa Valley Indian Reservation bears little resemblance to its functions in non-Public Law 83-280 States. The function of the Bureau of Indian Affairs outside of the State of California in non-Public Law 83-280 States has been described under oath by the Superintendent of the Hoopa Agency Bureau of Indian Affairs as being "totally different". The Bureau's limited function on Public Law 83-280 Reservations, such as the Hoopa Valley Indian Reservation dates back to the enactment of Public Law 83-280 in 1953. Upon passage of Public Law 83-280, the Bureau of Indian Affairs ceased to provide many of the governmental services that it had previously rendered and which it still renders in non-Public Law 83-280 States. Concurrently, the State of California and her counties and cities assumed the responsibility of providing many of the governmental services which the Bureau of Indian Affairs had previously rendered. Although the exact meaning of Public Law 83-280 is only now being finally determined, it has historically allowed Humboldt County to provide law enforcement services within the Hoopa Valley Indian Reservation, to establish a Justice Court for the administration of justice, to provide for the maintenance and regulation of roads within the Reservation, to enact and enforce health and sanitation ordinances and to provide directly or through other local agencies a full range of governmental services including education, health care and welfare assistance.

Many of these services are developed and contained in County ordinances. By way of illustration, the County of Humboldt has implemented legislative programs by county ordinances in the following areas:

1. The administration of justice within the Reservation is provided by an inferior court named the Klamath-Trinity Justice Court. The jurisdictional boundaries of the Justice Court are established by Humboldt County Ordinance No. 388.

2. The right of the electorate to elect the governing body of the County of Humboldt is dependent upon Humboldt County Ordinance No. 1063 which divides the County into five supervisorial districts. One of these districts includes the Hoopa Valley Indian Reservation.

3. The regulation of traffic on County roads within the Hoopa Valley Indian Reservation and the rancherias scattered throughout the County is accomplished by ordinances of the County of Humboldt. State law requires enactment of ordinances to establish speed limits, boulevard stops, weight limits and similar traffic safety regulations.

4. Certain forms of gambling are regulated by County ordinances. Humb. Co. Ord. Nos. 161 (slot machines) and 396 (card rooms).

5. Humboldt County regulates by ordinance many subjects in the area of health, sanitation and welfare, such as restaurants, Humb. Co. Ord. No. 422, sewage disposal, Humb. Co. Ord. No. 945, and garbage collection and disposal, Humb. Co. Ord. No. 259.

6. Pursuant to agreement with the Bureau of Indian Affairs, the County maintains roads within the Reservation and the several rancherias. The roads are protected from encroachment under Humboldt County Ordinance No. 896.

The holding of the Ninth Circuit in the *Santa Rosa* decision that county ordinances have no force and effect within "Indian country" has an immediate effect upon the above mentioned legislative programs and services provided by the County of Humboldt. Apparently, none of the above County Ordinances can be enforced against non-Indians or Indians, on either trust land or on non-trust lands within the Hoopa Valley Indian Reservation.

The provision of local governmental services is often coordinated and planned by the use of various land use control techniques, such as land use general plans and zoning ordinances. Land use planners agree that planning for an area such as a reservation must be based on all of the land within the reservation. *Santa Rosa* implies that the State can apply zoning and building codes only to those portions of the Reservation checkerboard that are colored non-trust. Adjacent trust squares must be zoned, if at all, by the Federal government. Effective land use planning cannot be done on a random checkerboard basis.

For these reasons, the County of Humboldt is vitally interested in whether County ordinances are applicable to "Indian country" and whether its land use planning programs for "Indian country" have the the force and effect of law. Resolution of the issues

raised will have an immediate effect on the services the County of Humboldt provides for the Hoopa Valley Indian Reservation and other "Indian country" in the County.

INTRODUCTION

The *Santa Rosa* case involves the application of building and zoning ordinances of the County of Kings to a One Hundred Seventy (170) acre rancheria upon which approximately One Hundred (100) people reside. (Clerk's Record [CR] 70-77). The rancheria is occupied by the Santa Rosa Band of Indians which has a governing body recognized by the Secretary of the Interior. (CR 78-79, 255). As will be shown infra it is significant that there is no treaty or Federal agreement between the Santa Rosa Band of Indians or any other Indian tribe within the State of California. 25 U.S.C. § 71 [Prohibiting use of treaties in relations with Indians since 1871]; *Elser v. Gill Net Number One,* 246 Cal. App. 2d 30, 37, 54 Cal. Rptr. 568 (1966); *Acosta v. County of San Diego,* 126 Cal. App. 2d 455, 463, 272 P. 2d 92 (1954).

"Indian country" in California is often unlike the Santa Rosa rancheria. "Indian country" can be of practically any size ranging from a few acres to hundreds of square miles. The characteristics of "Indian country" also vary. It may be isolated rural country or it may be located within or adjacent to urban centers or cities such as the popular resort, Palm Springs, California. Title to "Indian country" may

be vested in the United States of America held in "trust" for an Indian or an Indian tribe or the title may have been conveyed free of that "trust" by the United States Government to an individual. Indians, as well as non-Indians, may reside in "Indian country".

Previous decisions of this Court have established that the jurisdiction of States within Indian reservations is defined by (1) applicable treaties, (2) applicable federal statutes and (3) whether State jurisdiction would impair reservation self-government. *Moe v. Confederated etc. Tribes,* supra; *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 147-149, 36 L. Ed. 2d 114, 119, 93 S. Ct. 1267 (1973); *Organized Village of Kake v. Egan,* 369 U.S. 60, 73-75, 7 L. Ed. 2d 573, 582-583, 82 S. Ct. 562 (1962). There are, as stated above, no applicable treaties and Public Law 83-280 is the controlling Federal statute. Congress has subordinated reservation self-government to the paramount power of Public Law 83-280 States, such as California. 25 U.S.C. § 1322(c). Therefore, the issues presented in this case turn on the interpretation of Public Law 83-280.

The *Santa Rosa* decision rests on several alternative holdings. First, *Santa Rosa* holds that the Kings County building and zoning ordinances are not enforceable because, as interpreted by the Ninth Circuit, county ordinances are not "civil laws of [the] State . . . that are of general application . . . within the State . . . ." for purposes of Public Law 83-280. Second, it holds that such ordinances are "encumbrances" as used in the phrase "[n]othing in this

section shall authorize the alienation, encumbrance, or taxation of any real . . . property . . . that is held in trust . . ." 25 U.S.C. § 1322(b). Each of these holdings is premised upon the conclusion that Public Law 83-280 States have no jurisdiction in "Indian country" except as expressly granted.[2] The remaining holdings of the *Santa Rosa* case will not be discussed in this amicus brief.

COUNTY ORDINANCES

As mentioned earlier, one of the alternative holdings in the *Santa Rosa* opinion is that "County ordinances" can not be enforced in "Indian country" although comparable "State laws" are enforceable. This alternative holding engenders serious practical problems. For example, Humboldt County will lose jurisdiction to apply County ordinances to the Hoopa Valley Indian Reservation or other "Indian country" within the County. The range of subjects governed by Humboldt County ordinances has been mentioned earlier in Humboldt County's Statement of Interest. This distinction between State laws and County ordinances also creates a serious hiatus in needed governmental regulation and services; neither the Bureau of Indian Affairs nor the Hoopa Valley Tribe has comparable legislative programs to fill the void created by the denial of County jurisdiction within "Indian country". Similarly, the record in *Santa Rosa*

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[2]The source of jurisdiction is important to units of local government. As interpreted in *Santa Rosa,* local government has no jurisdiction in "Indian country" under Public Law 83-280. However, the independent jurisdiction of States recognized in *Moe v. Confederated etc. Tribes,* supra, subsists in local government.

fails to show that either the Bureau of Indian Affairs or the Santa Rosa Band of Indians has legislative programs comparable to Kings County.

The California Legislature could close the regulatory void only by altering the form of city and county government contained in Article XI of California Constitution and various State statutes. First, the State of California would have to create new departments or agencies to handle programs that have been historically legislated, funded and manned by local governments. Second, the transfer of regulation from local governments to the State could not be limited to the mere assumption of regulatory power over "Indian country" leaving the remainder of the State under local control. Regulations of the State limited to "Indian country" would be special or discriminatory statutes having no force and effect elsewhere in the State. Such a statute would appear to be proscribed by Public Law 83-280 which provides in part:

> "[t]hose civil laws of such State . . . that are of *general application* to private persons or private property shall have the same force and effect within such Indian country *as they have elsewhere* within the State . . . ." 25 U.S.C. § 1322(a). [Emphasis added.]

A statute limited in effect to "Indian country" would not be of general application and effect and would have no force and effect elsewhere within the State. Thus, California is faced with the dilemma of either leaving "Indian country" unregulated and largely unprotected or of stripping her political subdivisions of their constitutionally granted police powers and

assuming functions historically and more appropriately left to local government.

In conclusion, the *Santa Rosa* decision either requires the State of California to drastically change its form of government and/or it requires the Federal Government to assume the burdensome and costly task of enacting and administering programs comparable to those now provided by Humboldt County.

This large shift in Federal, State and local governmental services turns on the *Santa Rosa* decision which, it must be observed, misapprehends certain facts and is internally inconsistent. First, the *Santa Rosa* holding that County ordinances have no force and effect within "Indian country" is based on a misperception that there is nothing in the legislative history of Public Law 83-280 (28 U.S.C. § 1360) which evidenced Congressional intent to permit local regulation. Appendix 1 to Petition of Kings County at p. 10. The fact is that the legislative history shows that Congress intended to transfer Federal jurisdiction to "[s]tate *and local authorities,*" 1953 U.S. Code Cong. & Adm. News 2412, 2413, 2414; to "political subdivisions", *id.* at 2410; to *"counties," id.* at 2412, 2413; and to the "[s]tate, *county,* or municipal subdivision," *id.* at 2410. (Emphasis added.) Public Law 83-280 was preceded by a lengthy study and report by the Bureau of Indian Affairs, *Investigation of Indian Affairs,* H.R. 2503, 82d Cong. 2d Sess. (1952), which had presumably been requested by the previous session of Congress. H.R. Res. No. 698, 82d Cong., 1st Sess., Rep. No. 2503 (1952). This Bureau report

in recommending transfer of jurisdiction mentions "local authorities" or "counties" no less than 14 times in discussing the effect of the recommended transfer of jurisdiction. Second, the opinion is internally inconsistent. It holds that county ordinances are not enforceable in "Indian country" yet it vacated the United States District Court order enjoining enforcement of any ordinances within the Santa Rosa rancheria. In vacating the District Court injunction, the opinion observes the District Court must:

> "[D]etermine on a case-by-case basis when concrete disputes arise whether the County has jurisdiction to enforce a particular ordinance under the applicable jurisdictional principles enunciated above." Appendix 1 at p. 27.

There is no need for a case-by-case determination if, as the opinion holds, a county ordinance is not a civil law of general application.

The *Santa Rosa* opinion may also be criticized for drawing a distinction in law where a distinction in fact may not exist. The distinction made by the Ninth Circuit Court of Appeals in *Santa Rosa* between "state" and "local" laws ignores the relationship between the State of California and her political subdivisions and it assumes that a clear boundary exists between a "state law" and a "local law". The boundary chosen by the Court is the enacting authority.

This arbitrary boundary does not reflect the legislative process in the State of California. Many State laws, although they embody a policy of statewide concern, rely in whole or in part upon legislative implementation by political subdivisions of the State of California. The ordinances of the County of Kings relating to building codes and zoning are good examples of this.

In 1970 the California State Legislature found that uniformity of building codes throughout the State of California was a matter of statewide interest and concern. Cal. Stats. 1970 Ch. 1436, § 7. This State policy was implemented by the adoption of California Health and Safety Code Section 17922 which specifies that certain uniform industry codes such as the Uniform Building Code must be adopted. This policy was further carried out in California Health and Safety Code Section 17958 which requires each city and county to adopt the Uniform Codes specified in California Health and Safety Code Section 17922. That section further provides that in the event a city or county does not adopt such codes, the codes become effective in that city or county by default. The California Legislature has also provided that in the event a city or county fails to enforce the applicable building code, the State of California will assume enforcement responsibilities and charge the county for the costs of enforcement. Cal. Hlth. & Saf. Code § 17952.

The laws of the State of California relating to mobilehome placement and installation are a similar mix of State and local laws. Cal. Hlth. & Saf. Code § 18613; Cal. Govt. Code §§ 65300-302, 65800, 65860.

In short, it is difficult if not impossible, to draw an effective line between State statutes and local ordi-

nances. In California the two often blend together to form an effective legislative program. Surely Congress did not intend, in passing Public Law 83-280, to restrict the form of State government by creating a simplistic distinction between State statutes and county ordinances. No such arbitrary distinction exists under the inherent jurisdiction of States to apply certain of their laws within "Indian country". See *Moe v. Confederated etc. Tribes,* supra.

ENCUMBRANCES

The second point this brief will address is the *Santa Rosa* alternative holding that "traditional land use regulations", such as building codes and zoning laws are "encumbrances" for purposes of Public Law 83-280. This holding means that neither the State of California nor her cities and counties may enforce building codes and zoning laws against lands in "Indian country" *held in trust* by the United States Government. Since the encumbrance restriction contained in Public Law 83-280, 28 U.S.C. § 1360(b); reenacted at 25 U.S.C. § 1322(b), applies only to trust lands, it may be concluded that the State of California can enforce building codes, zoning laws and other land use regulations on patented (non-trust) lands within "Indian country".

The result of the encumbrance holding is impracticable and illogical land use regulation. It means, for instance, that the State of California can regulate only a portion of the Hoopa Valley Indian Reser-

vation.[3] State and use regulations would not be applicable to those random checkerboard squares that are held in trust by the United States Government. It is evident that land use regulations applicable only to every other lot within a subdivision are impracticable and ineffectual. This is especially true on the Hoopa Valley Indian Reservation because neither the Bureau of Indian Affairs nor the Hoopa Valley tribe have comparable controls. This checkerboard result is inconsistent with Congressional intent and recent Supreme Court cases. In *Moe v. Confederated Salish and Kootenai Tribes,* supra 44 U.S.L.W. at 4540 the Court stated:

> "Congress by its more modern legislation has evinced a clear intent to eschew any such "checkerboard" approach within an existing Indian reservation, and our cases have in turn followed Congress' lead in this area."

The Ninth Circuit's definition of "encumbrance" in *Santa Rosa* also presents serious conceptual difficulties. It is difficult to construct a definition of "encumbrance" which includes a building code and a zoning ordinance but excludes laws controlling gambling or boxing or regulating air or water pollution. Each is directed to controlling profitable human activities. The Uniform Building Code which regulates construction practices is founded on "broad based performance principles . . ." Preface, Uniform Build-

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[3]The encumbrance holding also means that the zoning and building powers of the Papago Council and the Salt River Pima-Maricopa Community Council do not extend to Indian trust lands although it was the intent of Congress to confer such powers. 25 U.S.C. §§ 416-416j; 1966 U.S. Code & Cong. News 1302; 112 Cong. Rec. 27000 (1966).

ing Code (1973 ed.). Similarly, air and water pollution laws generally regulate commercial enterprises by means of performance standards. California boxing regulations are phrased in terms of:

> "Any person, who, within this state . . . being the owner, lessee, agent, or occupant of any vessel, building, hotel, room, enclosure or ground, or any part thereof, whether for gain, hire, reward or gratuitously or otherwise, permits the same to be used or occupied for such a pugilistic contest . . . ." Cal. Penal Code § 412.

This language is quite similar to that found in zoning ordinances. Therefore attempts to define encumbrance in terms of whether the regulation in question affects the use or enjoyment of trust property or its value fail to the extent it is proper to distinguish building and zoning laws from boxing, gambling and pollution laws.

In conclusion, unless the term "encumbrance" is limited to property interests subsisting in third persons to the diminution of its value but consistent with the passing of the fee, the "encumbrance immunity" could encompass every potentially profitable activity. It is submitted such a result would undermine the purpose of Public Law 83-280 to confer jurisdiction upon the States.

CONCLUSION

The case is important from several different aspects.

First, an historical overview of the trend of Congressional policy and judicial opinions discloses the

evolution of a policy to assimilate American Indians into the mainstream of American society. See *Organized Village of Kake v. Egan,* supra, 369 U.S. at 71-74, 7 L. Ed. 2d at 581-583, 82 S. Ct. at 568-570. The *Santa Rosa* opinion appears to retreat from this trend.

Second, the Court in defining State jurisdiction in non-Public Law 83-280 States has by implication or comparison defined State jurisdiction in Public Law 83-280 States. This Court has consisistently inferred in striking down State jurisdiction in previous non-Public Law 83-280 cases, that the result would have been different had the State chosen to assume the federal powers Public Law 83-280 transfers to the States. *Williams v. Lee,* 358 U.S. 217, 3 L. Ed. 2d 251, 79 S. Ct. 269 (1959); *Kennerly v. District Court,* 400 U.S. 423, 27 L. Ed. 2d 507, 91 S. Ct. 480 (1971); *Seymour v. Superintendent,* 368 U.S. 351, 7 L. Ed. 2d 346, 82 S. Ct. 424 (1962); see *Moe v. Confederated etc. Tribes,* supra 44 U.S.L.W. at 4540. These cases underscore the Court's observation in *Williams v. Lee,* supra, 358 U.S. at 221 n.6, 3 L. Ed. 2d at 254, 79 S. Ct. at 271 that Public Law 83-280 granted "broad civil and criminal jurisdiction". Three years later the Court noted that Public Law 83-280 granted States "full civil and criminal jurisdiction". *Organized Village of Kake v. Egan, supra,* 369 U.S. at 74, 7 L. Ed. 2d at 583, 82 S. Ct. at 570. By implication, jurisdiction in non-Public Law 83-280 States should be somewhat more restricted. However, the *Santa Rosa* decision leaves little difference between States which have Public Law 83-280 jurisdiction and those

that don't. Compare *Moe v. Confederated etc. Tribes,* supra; *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 148, 36 L. Ed. 2d 114, 119, 93 S. Ct. 1267, 1270 (1973) with *Omaha Tribe of Indians v. Peters,* 516 F.2d 133 (8th Cir. 1975); but compare *Santa Rosa* with *Norvell v. Sangre de Cristo Dev. Co., Inc.,* 372 F. Supp. 348 (D.N.M. 1974) rev'd on other grounds 519 F.2d 370 (10th Cir. 1975). Surely, Congress intended States to acquire significant jurisdiction through Public Law 83-280.

Third, Public Law 83-280 is a major piece of legislation in the field of Indian affairs. However, with the exception of *Bryan v. Itasca County,* 228 N.W.2d 249 (Minn. 1975), cert. pending No. 75-5027, this Court has not yet substantively considered Public Law 83-280. *Santa Rosa* establishes important precedent in defining the interrelationship of Indians, Indian Tribes, units of local government, the several States, and Federal Government. Necessarily, the issues have great practical ramifications as we have tried to show herein.

The petition for certiorari should be granted.

Dated, June 4, 1976.

RAYMOND W. SCHNEIDER,
County Counsel, County of Humboldt,
JOHN L. COOK,
Deputy County Counsel, County of Humboldt,
Attorneys for Amicus Curiae.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1674

KINGS COUNTY et al.,
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vs.

SANTA ROSA BAND OF INDIANS et al.,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Amici Curiae States of California, Alaska, Minnesota, Nebraska, Oregon and Washington

EVELLE J. YOUNGER
Attorney General of the State of California

CARL BORONKAY
Assistant Attorney General

RICHARD C. JACOBS
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Tel: (415) 557-0285

AVRUM M. GROSS
Attorney General of Alaska
Pouch K, State Capitol
Juneau, Alaska 99801

WARREN SPANNAUS
Attorney General of Minnesota
375 Centennial Office Building
Saint Paul, Minnesota 55155

PAUL L. DOUGLAS
Attorney General of Nebraska
State Capitol
Lincoln, Nebraska 68509

LEE JOHNSON
Attorney General of Oregon

W. MICHAEL GILLETTE
Solicitor General
State Office Building
Salem, Oregon 97310

SLADE GORTON
Attorney General of Washington
Temple of Justice
Olympia, Washington 98504

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1674

KINGS COUNTY et al.,
Petitioners

vs.

SANTA ROSA BAND OF INDIANS et al.,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Amici Curiae States of California, Alaska, Minnesota, Nebraska, Oregon and Washington

JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C. §§ 1254(1), Kings County has petitioned this Honorable Court for a writ of certiorari to review a decision of the United States Court of Appeals for the Ninth Circuit. This amicus curiae brief is respectfully submitted by the State of California, pursuant to Rule 42(4) of this Honorable Court, joined in by the states of Alaska, Minnesota, Nebraska, Oregon and Washington.

INTEREST OF THE AMICI STATES

The decision of the Court of Appeals, *Santa Rosa Band of Indians v. Kings County,* ..... F. 2d ..... (1975), deter-

mined two issues which substantially affect the ability of the State of California, as well as the ability of the states which have joined in this amicus brief, to carry out the congressional mandate embodied in Public Law 83-280, 28 U.S.C. § 1360. First, the Court of Appeals concluded that county ordinances were not "civil laws of [the] State . . . that are of general application . . . within the State. . . ." 28 U.S.C. § 1360. Second, assuming that county ordinances were applicable to the Santa Rosa Rancheria, it concluded that the enforcement of the County's zoning ordinances and building codes would constitute an "encumbrance" of the Indian reservation trust lands, contrary to the exception of Public Law 280 forbidding the "alienation, encumbrance, or taxation of any real or personal property . . . belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States. . . ." 28 U.S.C. § 1360(b).

As we shall note below, the conclusion that county ordinances are not within the congressional authority granted to the states by Public Law 280 misconceives the nature of the governmental relation between a state and its counties; it also ignores the fact that counties, in large part, enact zoning ordinances and building codes in response to a specific mandate imposed by state law, and that such ordinances and codes accordingly become part of the body of state law. Further, the interpretation of the "encumbrance" provision of Public Law 280 seriously misinterprets the congressional intention underlying Public Law 280. Both interpretations have contributed to a result unintended by Congress, one which prohibits the states from enforcing regulatory schemes which form highly significant portions of their attempts to protect the health and welfare of their citizenry. For each of these reasons, these *amici* states,

each of which is subject to the provisions of Public Law 280, have a substantial and real interest in the outcome of this litigation; California and the states of Alaska, Minnesota, Nebraska, Oregon and Washington accordingly file this amici curiae brief in support of the position of the petitioners.

I. Counties Are Political Subdivisions of a State, and Their Ordinances Are Accordingly "Civil Laws of [The] State . . . That Are of General Application" Within the Meaning of Public Law 280

There can be no dispute to the proposition that counties are political subdivisions of the state in which they are located. As the California Supreme Court has stated:

> "The county is merely a political subdivision of state government, exercising only the powers of the state granted by the state, created for the purpose of advancing 'the policy of the state at large, for purposes of political organization and civil administration in matters of finance, of education, of provision for the poor, of the means of travel and transport and expressly for the general administration of justice.'" *County of Marin v. Superior Court,* 53 Cal. 2d 633, 638-639 (1960).

The courts of each of the other Public Law 280 states which utilize a county system of government have recognized a similar rule. *State ex rel. Taylor v. Superior Court,* 2 Wash.2d 575, 98 P.2d 985 (Wash. 1940); *Franek v. Butler County,* 127 Neb. 852, 257 N.W. 235 (Neb. 1934); *Hitchcock v. Sherburne County,* 227 Minn. 132, 34 N.W. 2d 342 (Minn. 1948); *Powell Grove Cemetery Association v. Multnomah County,* 228 Ore. 597, 365 P.2d 1058 (Ore. 1961); *State v. Mutter,* 23 Wis. 2d 407, 127 N.W.2d 15

(Wis. 1964). This Court recently recognized the principle, holding:

> "Political subdivisions of states—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter v. City of Pittsburgh,* 207 U.S. 161, 178, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them'. . . ." *Reynolds v. Sims,* 377 U.S. 533, 575 (1964).

The relationship of a county to its parent state is even more readily apparent when considered in light of the ordinances involved in this action. Kings County zoned the area on which the plaintiffs planned to use their mobile homes, for general agricultural use. C. T. 126. The use of the mobile homes within such an agricultural area is permissible under the zoning ordinance, so long as certain approvals are received from the County. The County building ordinances further require permits for electrical and plumbing hookups, and require payment of a fee for the permits and for inspections by the County. C. T. 120-121. Finally, the approvals required from the County must be preceded by the preparation and consideration of an environmental impact report under the California Environmental Quality Act, Cal. Public Resources Code §§ 21000 *et seq.* Before the County may grant such approvals, it must prepare and consider the environmental impact report and must act to mitigate any significant environmental impacts which would be caused by carrying out the proposed project. *Friends of Mammoth v. Board of Supervisors,* 8 Cal.3d 247, 263 fn. 8 (1972); *Burger v. County of Mendocino,* 45 Cal.App.3d 212 (1975). As we shall note below, each of the above ordinances was enacted, however, not as an exercise of any inherent power of the County, but in response to a direct obligation imposed *by state law.* Thus, under these circumstances, it may fairly be said that the County ordinances are, in fact, part and parcel of state law, designed to localize a statewide policy expressed in state statute.[1]

1. Since 1965, California law has required each County to "adopt a comprehensive, long-term general plan for the physical development of the county. . . ." Cal. Government Code § 65300. As a part of that plan, each County has been required to designate a "proposed general distribution and general location and extent of the use of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public building and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land." Cal. Government Code § 65302. Since January 1974, all county zoning ordinances have been required to be consistent with the duly adopted general plan. Cal. Government Code § 65860. In addition, California law has long sought to encourage the preservation of the maximum amount of California's agricultural land, on the ground that it "is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious

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1. We have referred in this brief only to the pertinent California statutes. Each of the signatory states to this brief, however, has similar and analogous statutes designed to allow a local governmental entity to conform state policy to the area under its jurisdiction. Alaska, for example, requires its local boroughs to engage in planning and zoning activities designed to localize its state-wide policies. See, A. S. 29.33.070.

food for future residents of this state and nation." Cal. Government Code § 51220.

By these and other similar enactments, the California legislature has attempted to guide the counties into a systematic consideration of the possible uses of their land resources, and to provide strong policy guidelines concerning the maintenance of agricultural lands. Hence, it is apparent that Kings County, by zoning the land here involved as agricultural, is simply following one of the basic policy mandates of state law; the County in no way exercises a discretion unlimited by state law, but only acts within the boundaries of established state policy to conform that policy to the local area within its jurisdiction. In this regard, then, the County exercises "only the powers of the state . . . . for the purpose of advancing 'the policy of the state at large, for purposes of political organization and civil administration.'" *County of Marin v. Superior Court, supra,* 53 Cal.2d 633, 638-639.

The decision of the Ninth Circuit, however, ignored this fact in its conclusion that county ordinances were not "civil laws of [the] state" within the meaning of Public Law 280. By such a holding, the Court has effectively eliminated any ability of California to include Indian lands within its comprehensive land use planning mechanisms.

2. By state law, California has similarly required each County to adopt the Uniform Building Code, promulgated by the International Conference of Building Officials, as its County Building Ordinance. Cal. Health and Safety Code § 17922; 25 Cal. Administrative Code § 1070. Hence, although the approvals required from Kings County for the respondents' proposed mobile home uses are set forth in county ordinances, and although the electrical and plumbing

permits and fees are likewise set forth in county ordinances, those ordinances are explicitly required by state law to conform to the Uniform Building Code. It is thus clear, again, that the County is only enforcing an obligation explicitly imposed upon it by state law; at the same time, it is enforcing a state law of general application throughout the state.

3. California law further requires each public agency which is considering approval of a proposed private "project" to prepare and consider an environmental impact report prior to approval of the project.[2] Cal. Public Resources Code § 21151. Such a report must consider, *inter alia,* the environmental impact of the proposed action, adverse environmental effects which cannot be avoided if the proposal is implemented, alternatives to the proposed project, and the growth-inducing aspects of the proposal. Cal. Public Resources Code §§ 21151 and 21100. This requirement of state law has been described as part of California's policy that ". . . highest priority shall be given to environmental considerations." *County of Inyo v. Yorty,* 32 Cal.App.3d 795, 804 (1973).

Thus, again, like the requirements under the County zoning ordinance and under the County building code, the Kings County requirements regarding preparation and consideration of an environmental impact report are explicitly required by California law: they are not requirements imposed only by the County, but requirements carried out by the County under the mandate of California law. As such, the County is only localizing one of the "civil laws

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2. The term "project" encompasses both projects to be carried out by a public agency, and private projects which require governmental approval. Cal. Public Resources Code § 21151; *Friends of Mammoth v. Board of Supervisors, supra,* 8 Cal.3d 247.

of [the] State . . . that [is] of general application . . . within the State . . . ." and the ordinance should accordingly be applicable to the Santa Rosa Rancheria.

4. California thus believes that the distinction drawn by the Ninth Circuit between "state" and "county" laws fails to reflect actual legislative practice, and prevents the proper realization of state policy. As we have noted above, the California counties play an indispensable role in enforcing California law and policy; they fulfill the critical function of adapting broad state policy to local conditions and thereby assure the most practical and efficient means of securing the ends mandated by the legislature. The Court, by holding that "county" ordinances are not applicable on the Santa Rosa Rancheria, has effectively prevented California from utilizing counties to administer the policy of the state, insofar as it applies to Indian lands; while disclaiming an intent to prohibit the application of state laws to Indian lands, the Court has achieved that very result. This conclusion is even more apparent in the case of Alaska. Alaska, unlike the other *amici* states, does not have Indian trust lands concentrated in easily defined reservations, but has trust lands scattered throughout the state, including metropolitan areas. The Ninth Circuit decision prevents the Alaskan boroughs from applying their land use control enactments to these lands; the result is accordingly the "'impractical pattern of checkerboard jurisdiction'" which this Court has only recently again condemned. *Moe v. Salish and Kootenai Tribes*, ... U.S. .... (April 27, 1976).

5. There is yet a further reason, moreover, for California's interest in the distinctions advanced by the Ninth Circuit. As we shall note, a number of California's significant environmental laws are enforced not by the state or counties, but by regional agencies. As part of their enforce-

ment activities, these regional agencies often adopt regulatory programs pursuant to state law which govern the areas within their jurisdiction, but which, under the Ninth Circuit's distinction between "state" and "county" laws, cannot be termed as laws "of general application" under Public Law 280.

California's water quality laws, for example, are enforced by the California State Water Resources Control Board and nine regional water quality control boards; each of the regional boards has primary jurisdiction over a specific geographical area of the state. Cal. Water Code §§ 13000 *et seq.* Under the analysis of the Ninth Circuit, however, the regional programs of the regional boards apparently would not apply to activities on Indian lands resulting in water pollution.

In addition, both federal law, Clean Air Act of 1970, 42 U.S.C. §§ 1857 *et seq.*, and state law, Cal. Health and Safety Code §§ 24198 *et seq.*, require the development of air pollution control plans applicable only to specific geographical areas because of air pollution problems specifically related to the area; under the Ninth Circuit analysis, however, these plans would not appear to be applicable to Indian lands, since they are not state laws of general application.

Further, the People of California established by initiative an administrative agency structure designed to formulate a plan for the future of the California coastline. Cal. Public Resources Code §§ 27000 *et seq.* During the period allowed by the initiative for the preparation of such a plan, regional coastal commissions are charged with the duty of enforcing a permit system for development proposed along the California coast. *Id.* The jurisdiction of each of the regional commissions does not extend throughout the state, however,

and, like the state regulation mentioned above, apparently would not extend to activities on Indian lands.

As a result of the Ninth Circuit decision, it thus appears that California may not utilize its regional mechanisms, chosen as the most efficient means of realizing California legislative policy, on Indian lands. That result is inconsistent with the congressional intent to terminate federal responsibility over the Indian tribes within the Public Law 280 states, and, to a large part, to assimilate them into state society. See, H.R. Rep. No. 848, 83rd Cong., 1st Sess. 3 (1953). As Congress expressed only two weeks prior to the passage of Public Law 280:

> ". . . [It] is the policy of Congress, as rapidly as possibile to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States . . . .
>
> ". . . [It] is declared to be the sense of Congress that, at the earliest possible time, all the Indian tribes and the individual members thereof located within the State of California . . . . should be free from Federal supervision and control . . . ." 67 Stat. B132 (1953).

The Ninth Circuit pointedly ignored these legislative expressions, however, and resolved any difficulties in the statute by construing them not by the policy expressed by Congress, but by a repeated canon of construction favorable to Indian sovereignty. That course of action cannot stand in light of the recent declaration of this Court:

> "A canon of construction is not a license to disregard clear expressions of tribal and congressional intent . . . . Some might wish they had spoken differently, but we cannot remake history." *DeCoteau v. District Court,* 420 U.S. 425, 447-449 (1975).

California accordingly believes that the Kings County ordinances, enacted in response to a specific mandate from the California legislature, are "civil laws of [the] State . . . . that are of general application . . . within the State . . . ." 28 U.S.C. § 1360. The phrase "of general application" was not intended to prevent the application of county ordinances to Indian lands, but only to ensure that such ordinances be equally applicable to non-Indians as well as Indians.

II. State Land Use and Environmental Regulations Do Not Constitute Encumbrances Within the Meaning of Public Law 280

As an alternative ground of decision, the Ninth Circuit concluded that the Kings County ordinances constituted "encumbrances" within the meaning of Public Law 280, and hence were prohibited by the terms of the statute. As we shall explain below, however, such an interpretation is inconsistent with other language in Public Law 280; moreover, it fails to reflect the congressional policy underlying Public Law 280. As a result, the "encumbrance" language of the statute should be interpreted as encompassing only a property right which constitutes a burden on Indian property; the term has no application, however, to state laws and county ordinances regulating the use of property which do not create property rights adverse to those of the fee holder.

In the first instance, the interpretation of the Ninth Circuit is inconsistent with other language in Public Law 280: the statute expressly excepts Indian trust property from a state's *"regulation of the use"* if the regulation is inconsistent with a federal treaty, agreement, statute or regulation. Since Congress explicitly provided an exception to the state's power to regulate use, the congressional

intention was without question to permit state regulation of the use of Indian land. The Ninth Circuit's interpretation of the "encumbrance" exception, however, would totally preclude *any* land use regulation; thus, the two exceptions would irreconcilably conflict, since the "encumbrance" regulation would absolutely prohibit state regulation, while the "treaty, agreement, statute or regulation" exception would permit a broad range of state regulation. Such a conclusion would, of course, fail to properly construe the various parts of the statute harmoniously. See, *Schneiderman v. United States,* 320 U.S. 118 (1943).

More significantly, however, the Ninth Circuit misread the congressional policy underlying Public Law 280, and having so acted, interpreted the term "encumbrance" in a manner wholly inconsistent with the result intended by Congress.

As we noted above, the House Report accompanying Public Law 280 considered termination of federal supervision of Indians to be a critical purpose of the statute. H.R. Rep. No. 848, 83d Cong., 1st Sess. 3 (1953). The language used by the House of Representatives was incorporated by the Senate in its report on the statute. S. Rep. No. 699, 83d Cong., 1st Sess. (1953). After its passage, moreover, the Secretary of the Interior consistently referred to the purpose of the statute as being termination of federal responsibility. See, Annual Report of the Secretary of the Interior 34-37 (1953); Annual Report of the Secretary of the Interior 227 (1954). As we also noted above, only two weeks prior to the passage of Public Law 280, the Senate passed House Concurrent Resolution No. 108, which declared it to be the policy of the United States government to make Indians "subject to the same laws . . . as are applicable to other citizens of the United States, to end

their status as wards of the United States and to grant them all of the rights and prerogatives pertaining to American citizenship." 67 Stat. B132 (1953).

Where a word used in a statute is subject to equally reasonable interpretations, it must, of course, be interpreted to best achieve the end desired by Congress. Under this view, then, the term "encumbrance" should be interpreted narrowly, and should be applied only to bar the actual creation of an interest or right in the land, not to prohibit traditional state exercises of land use regulation. *Accord: People v. Rhodes,* 12 Cal.App.3d 720 (1970); *contra: Snohomish County v. Seattle Disposal Co.,* 70 Wash. 2d 668, 425 P.2d 22 (1967), *cert. den.* 389 U.S. 1016 (1967). Such an interpretation is consistent with a long-standing federal policy designed to prevent Indians from being divested of their lands. See generally, *United States v. Waller,* 243 U.S. 452 (1917); *Lykins v. McGrath,* 184 U.S. 169, 171-172 (1902); and *Beck v. Flournoy Live-Stock and Real Estate Co.,* 65 F. 30 (1894), *app. dism.* 163 U.S. 686; see also *Federal Indian Law* (U.S. Govt. Printing Office, 1958), 787-803.

CONCLUSION

For each of the above reasons, the *amici* states believe that the Ninth Circuit improperly interpreted the meaning of Public Law 280. Its decision misreads the congressional policy underlying the statute, and, as a result, reaches a conclusion wholly inconsistent with congressional intent. The states of California, Alaska, Minnesota, Nebraska, Oregon and Washington accordingly join with Kings County in urging that the petition for a writ of certiorari be granted.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the State of California

CARL BORONKAY
Assistant Attorney General

RICHARD C. JACOBS
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Tel: (415) 557-0285

AVRUM M. GROSS
Attorney General of Alaska
Pouch K, State Capitol
Juneau, Alaska 99801

WARREN SPANNAUS
Attorney General of Minnesota
375 Centennial Office Building
Saint Paul, Minnesota 55155

PAUL L. DOUGLAS
Attorney General of Nebraska
State Capitol
Lincoln, Nebraska 68509

LEE JOHNSON
Attorney General of Oregon

W. MICHAEL GILLETTE
Solicitor General
State Office Building
Salem, Oregon 97310

SLADE GORTON
Attorney General of Washington
Temple of Justice
Olympia, Washington 98504

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Plaintiffs and Respondents,

v.

KINGS COUNTY, ET AL.,
Defendants and Petitioners.

Brief for the City of Palm Springs, California, as Amicus Curiae in Support of Petition for Writ of Certiorari

RAYMOND E. OTT, *City Attorney*
City of Palm Springs
3200 Tahiquitz-McCallum Way
P. O. Box 1786
Palm Springs, California 92262

EDWARD WEINBERG
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Attorneys for Amicus Curiae

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This brief is submitted in support of the petition of Kings County, California, et al., for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Santa Rosa Band of Indians, et al.* v. *Kings County, et al.*, No. 74-1565 (9th Cir. rehearing den. March 26, 1976). This brief is filed pursuant to Rule 42.4 of this Court.

DESCRIPTION AND INTEREST OF AMICUS CURIAE

The City of Palm Springs (hereinafter "city" or "Palm Springs") is a municipal corporation incorporated in 1938 pursuant to § 34300 *et seq.* of the Government Code of California. Within the city's boundaries are over 7,000 acres of land comprising elements of the Agua Caliente Indian Reservation established pursuant to the Mission Indian Act of 1891, 26 Stat. 712. All reservation lands within the city, except for about 175 acres which is retained as tribal property, have been allotted to individual members of the Agua Caliente Band of Mission Indians (hereinafter the "band") pursuant to the Act of March 2, 1917, 39 Stat. 969 as supplemented by the Act of September 21, 1959, 25 U.S.C. §§ 951-961. The band numbers approximately 172 members, including minor children.

The reservation lands are distributed throughout the city in a checkerboard pattern, largely in square mile sections (640 acres) conforming to the United States public land survey system. This checkerboard pattern is depicted on Appendix A, which also depicts the ownership status of such lands as of November 7, 1974.

Over 2900 acres of reservation lands have been sold with the approval of the Secretary of the Interior as required by law in such cases, *e.g.*, 25 U.S.C. § 956, and are no longer in Indian ownership. Title to the balance is held by the United States in trust for the band in the case of the 175 acres of tribal land, and in trust for individual allottees in the case of the balance. Such lands are hereinafter referred to as "trust," "restricted," or "Indian" lands. 1450 acres of ~~tribal~~ trust lands are currently under long term

leases, pursuant to 25 U.S.C. § 415, to non-Indian developers for residential, commercial, resort, country club and similar recreation oriented purposes. An additional 1750 acres of trust lands possess development potential but are not now leased. The Indian lands which are either leased or have development potential, like similar non-Indian owned lands within the city, command high rental and sales prices.

Palms Springs enjoys a national and international reputation as a resort and residential community of the highest caliber. The economy of the city rests upon its residential, resort and vacation character. Manufacturing industry is almost totally non-existent. Land use planning and zoning within the city have been carefully structured to maintain Palm Springs' desirability as a community of high environmental and ecologically sound standards, with emphasis upon low density, open space and limited structural heights.

Interest in Palm Springs burgeoned following World War II. The inapplicability to the checkerboarded Indian lands of the legal system prevailing in the balance of Palm Springs was recognized as a principal obstacle to economic development of the Indian lands. With the support of both Indian and non-Indian segments of the Palm Springs community (H. Rept. No. 956, 81st Cong., 1st Sess. (1949) at 2) Congress in 1949 enacted P.L. 322, 81st Cong., 1st Sess. (63 Stat. 704), section 1 of which provided that after January 1, 1950, all lands in the Agua Caliente Indian Reservation would be subject to the civil and criminal laws of the State of California, but that nothing therein should authorize the alienation, encumbrance or taxation of Indian trust lands.

In explaining the bill, the House Public Land Committee noted that Palm Springs was the only place in the United States where Indian lands were intermingled in a checkerboard pattern with highly developed urban lands of great value and that administration of the restricted Indian lands on the reservation "presented a unique problem to the Federal Government." The Committee bill was regarded as a "noncontroversial" attempt to clarify some of the problems of administration. "As the Indian lands are intermingled with the non-Indian lands, law and order could be more efficiently and effectively administered by the State than by the Indian Service. . . ." *Id.* at 1 and 2. The Senate Report, S. Rept. No. 669 (1949), was essentially similar.

The Congressman whose district included the Palm Springs area had explained to the House Committee that the purpose of Section 1 was to confer "jurisdiction over the police, fire and sanitary regulations, and so on, upon the State of California." Hearings on H.R. 4616 before the Subcommittee on Indian Affairs of the Committee on Public Lands, 81st Cong., 1st Sess., Ser. 16, at 132 (1949).

The Assistant to the Commissioner of Indian Affairs had testified that Indian and non-Indian lands in Palm Springs were so completely mixed together that it was not feasible to have two sets of law enforcement authorities both in operation in this area. With specific reference to zoning, that witness noted that the city lacked authority to zone the Indian lands with a resultant lack of any "over-all pattern . . . needed for protecting property values and increasing the maximum utilization of the city as a whole." *Id.* at 3. His solution was to confer on the state criminal jurisdiction over offenses committed by or against Indians on the reservation and to confer zoning jurisdiction over the reservation lands on the Secretary of the Interior. *Id.* That solution was rejected. Instead, as a compromise measure backed by all parties, including the Indians themselves, the Committee reported out, and Congress adopted, P.L. 322.

Zoning and other Palm Springs land use regulations were thereupon applied to both restricted Indian and to non-Indian lands within the city.

In 1953 came the enactment of P.L. 280 (Act of August 15, 1953, 67 Stat. 588), section 4 of which, pertaining to civil law jurisdiction, added section 1360 to Title 28 U.S.C., the construction of which by the Ninth Circuit is the subject of the petition for certiorari filed by Kings County, et al.[1] Section 5 of P.L. 280 repealed section 1 of the 1949 Act (P.L. 322) which, as above noted, applied only to the Agua Caliente reservation.

The legislative history of P.L. 280 is silent as to why the 1949 provision specifically dealing with Palm Springs was repealed. The legislative history of predecessor legislation reported in 1952 by the House Interior and Insular Affairs Committee, but not enacted, explains it.

The 1952 measure, H.R. 3624, 82nd Cong., 2d Sess., as originally introduced would simply have conferred jurisdiction on the State of California with respect to criminal offenses committed on all Indian reservations within the state. H. Rept. No. 2161, 82nd Cong., 2d Sess.

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[1] P.L. 280 also, as section 2, added section 1162 to Title 18 U.S.C., dealing with state criminal jurisdiction in the identical states and areas to which 28 U.S.C. § 1360 applied.

At the suggestion of the Department of the Interior, H.R. 3624 was revised by the House Interior and Insular Affairs Committee (and reported favorably) to also exclude the State of California from the application of the Indian liquor laws, and, of greater relevance here, to extend civil jurisdiction of the State of California over all Indian country within the state, rather than to the Agua Caliente reservation alone, as was the case under section 1 of the 1949 Act. Like P.L. 280, the extension of civil jurisdiction was not to authorize the alienation, encumbrance or taxation of restricted Indian property. The withholding of jurisdiction to regulate the use of restricted Indian property, however, was significantly broader than that finally adopted by Congress in P.L. 280. In H.R. 3624, as recommended by the Department of the Interior and approved by the House Committee, the exception was across the board—no regulation of the use of restricted Indian property was authorized. *Id.* By way of contrast, P.L. 280 [28 U.S.C.A. § 1360(b)] narrowed the withholding from jurisdiction to regulation "in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto."

The Interior Department's report to the House Committee on H.R. 3624 explained that extension of California's civil and criminal jurisdiction over Indian land throughout the state should be accompanied by a repeal of the separate Agua Caliente provisions in order that the same jurisdictional statute would be applicable to all Indian country in California. Congress accepted this recommendation; hence, P.L. 280's repeal of section 1 of the 1949 Act.

With the enactment of P.L. 280, Palm Springs continued to apply its zoning and other land use regulations to restricted Indian lands. However, in 1965, the Tribal Council of the Agua Caliente band brought suit against the City of Palm Springs to enjoin the city from applying its zoning laws to Indian trust lands. *Agua Caliente Band of Mission Indians' Tribal Council* v. *City of Palm Springs, et al.,* Civil No. 65-564-MC (C.D. Cal. 1965).

Two months after the Tribal council's suit was instituted, the Department of the Interior promulgated (30 Fed. Reg. 7520 [June 9, 1965]) the regulation now codified as 25 CFR § 1.4 (1975), the validity of which is one of the issues in the case at bar. Later that month, the Interior Department purported to adopt and make applicable to leased Indian trust lands within Palm Springs, the city's zoning code and other land use regulations as they then existed or as they might thereafter be amended with exceptions which relaxed the application of the zoning code to such lands in seven particulars. 30 Fed. Reg. 8172 (June 25, 1965).

The Tribal Council's suit was dismissed by order of the district court April 12, 1967, pursuant to a settlement reached by the parties and incorporated in a stipulated judgment approved by the court July 27, 1966. Under that settlement, the Tribal Council established an Advisory Indian Land Planning Commission, to serve in a consultative and advisory capacity to the city's planning commission and to the city council on zoning and land use matters involving trust lands, and the city revised the zoning ordinance to incorporate the exceptions prescribed by the Interior Department in the Federal Register Notice of June 25, 1965. The stipulated judgment further provided that it would no

longer be binding if either the Ninth Circuit or this Court were to hold that a state, or political subdivision thereof, is not subject to the jurisdiction of the Department of the Interior in regulating the use of Indian trust land covered by P.L. 280.

Early in 1971, the Tribal Council again brought an action against the city challenging the city's authority to zone restricted Indian lands. *Agua Caliente Band, et al.* v. *City of Palm Springs, et al.,* Civil No. 71-767-JWC (C.D. Cal. 1971). Reaching the merits, the district court held that (1) the portions of the Agua Caliente reservation within the city's exterior boundaries constituted a part of the city, (2) 25 CFR § 1.4 was invalid as conflicting with P.L. 280, and (3) the city had zoning jurisdiction over restricted Indian lands under P.L. 280. *Agua Caliente Band* v. *City of Palm Springs,* 347 F. Supp. 42 (C.D. Cal. 1972).

On appeal, the Ninth Circuit vacated the district court's decision and remanded the case to the district court on the ground that the record was inadequate to determine whether the cause is justiciable and, if so, the issues, if any, resolved or foreclosed by the judgment in the prior litigation *Agua Caliente Band, et al.* v. *City of Palm Springs, et al.,* No. 72-2504 (9th Cir., Jan. 24, 1975, unreported).

The parties have filed with the district court, memoranda on the issues raised by the remand and also on the effect on the litigation of the Ninth Circuit's decision in the case at bar. Further proceedings are pending. In the meantime, the Commissioner of Indian Affairs has given notice that he proposes to suspend the operation of the city's zoning ordinance to certain tracts of leased restricted lands so as to permit development thereon prohibited by the present zoning. 41 Fed. Reg. 7533 (Feb 19, 1976).

The Ninth Circuit's decision poses the threat of fragmented land use regulations to lands which are, in the words of the Interior Department in 1949 (*See* H.R. 4616 Hearings, *supra* at 4), "completely mixed together." As is apparent from Appendix A, that intermixture is significantly greater today and the need for unitary jurisdiction is even more acute. Where in 1949 Palm Springs had a total winter population of about 20,000, of which 5,000 non-Indians resided on the reservation lands within the city, the winter population today is about 60,000 and the permanent year-round population is 27,000.

In a city whose existence and economy is totally dependent upon its attractiveness as a recreation, resort and "second home" community, the development and maintenance of sound land use planning and zoning would, under any circumstances, present a most challeging aspect of municipal government. With fragmented jurisdiction, the difficulties of maintaining sound land use standards and zoning become immeasurably compounded. Inevitably, dual planning and zoning authority, even assuming identical standards and regulations, will, in such a confined area, give rise to divergent results as the rules are applied by separate authority.

This amicus curiae, therefore, has a significant interest in correction by this Court of the Ninth Circuit's erroneous interpretations of P.L. 280.

REASONS FOR GRANTING THE WRIT

1. Importance of the Case

This amicus curiae joins the petitioners in their analysis of the importance of the case. We would add two thoughts.

First. As is clear from the foregoing, the impact of the decision below in P.L. 280 states is felt not only at the county, but at the city level of government as well. In that respect it is not remiss to observe that zoning and similar land use regulaions were a response to pressures of growth first felt in urban centers. *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926). The customary units of local government exercising such authority by delegation from the state were until recently, preponderantly the cities. *See generally*, 8 McQuillin, *Municipal Corporations* §§ 25.02-.03 (3d ed., 1965 rev. vol.); Bosselman and Callies, *The Quiet Revolution in Land Use Control*, 2 (Council on Environmental Quality, 1971); Haar, *Land Use Planning*, 156-158 (2d ed. 1971).

Second. The Ninth Circuit's crabbed interpretation of the reference to state civil laws in 28 U.S.C. § 1360(a) would require P.L. 280 states to stand on their heads their allocations to cities and counties of zoning and planning authority in order to exercise the land use authority purportedly conferred.

Land use regulation is an exercise of state police power. *Euclid* v. *Ambler Realty Co., supra; McQuillin, supra* § 25.05. A city, this court has held, is a political subdivision of the state, created as a convenient agency for the exercise of such governmental powers of the state as may be entrusted to it. *Trenton* v. *New Jersey,*

262 U.S. 181, 185 (1923). Because states have customarily designated cities, and later counties, as the units of government to exercise such functions, it is inconceivable that Congress, in adopting P.L. 280, intended that states *qua* states must directly exercise those functions rather than maintaining their existing distribution of governmental functions among the units of government of their choosing.

The radical departure from usual state patterns of government that the Ninth Circuit's reading of P.L. 280 would require becomes even more incongruous when examined in the light of P.L. 280's lineal ancestor, the 1949 statute, P.L. 322, applicable only to the Agua Caliente reservation. There, as noted, (*See* H.R. 4616 Hearings, *supra* at 4) the sponsor of the legislation spoke of conferring jurisdiction on California over "police, fire, and sanitary regulations and so on". Could the Congress have intended that the California legislature must enact legislation setting up for the Agua Caliente reservation a state fire department and state building and sanitation codes, and to re-enact as state law, the codes of ordinances of Palm Springs and Riverside County (in which Palm Springs is located) in order for P.L. 322 to be operative? The answer is obviously in the negative.

The Congress could not have intended, either by P.L. 322 or by P.L. 280, to mandate such a drastic limitation on "the vast leeway in the management of its internal affairs" possessed by a state. *See Sailors* v. *Kent Board of Education*, 387 U.S. 105, 109 (1967).

2. Merits of the Case

Palm Springs joins the petitioners in their analysis of the merits of the decision below. We would emphasize two points.

First. Zoning by cities and counties in California is no longer simply a matter of delegation to those units of government; it is now mandated by state law prescribing controlling standards and criteria.

Section 7, Article XI of the California Constitution (Deering 1974) authorizes counties and cities to enact local police, sanitary and other ordinances and regulations not in conflict with general law. Section 65800 of the California Government Code delegates to counties and cities authority to "exercise the maximum degree of control over local zoning matters." However, the State of California is no longer simply a passive delegator of authority in such matters. In 1972, California amended its Government Code to require that, by July 1, 1974, county and city zoning ordinances be consistent with the "general plan" of the county or city. Government Code § 65860. Development of city and county "general plans" conforming to specified criteria was mandated by the California legislature in 1965. Government Code §§ 65101, 65300 *et seq.*

In 1973, the Supreme Court of California thus described the California statutes relating to planning and zoning:

> Under the Government Code, the legislative body of each city and county must establish a planning agency (§ 65100) which shall adopt a comprehensive, long-term general plan for the physical development of the city or county (§ 65300). As noted above, the plan must include a circulation element showing the general location

> of existing and proposed streets (§ 65302, subd. (b)). The plan may be changed after notice and hearing if the legislative body deems a change to be in the public interest (§ 65356.1). Cooperation between city and county planning agencies is encouraged (§§ 65305, 65306, 65650, 65651), and a city and county may adopt the same general plan (§65360). * * * Recent legislation requires county and city zoning ordinances to be consistent with the general plan by January 1, 1974. (§ 65860, subd. (a); Stats. 1973, ch. 120.) [2]

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[2] The Government Code contains more specific provisions regarding the implementation of other types of plans. For example, planning agencies are authorized to adopt a specific plan (§ 65450 et seq.) and to include regulations limiting the location of buildings and other improvements in planned rights of way (§ 65451). Another type of plan specified by the code is an open space plan (§ 65560 et seq.); building permits may not be issued unless the proposed construction is consistent with the local open space plan (§ 65567).

Selby Realty Co. v. *City of San Buenaventura*, 10 Cal. 3d 110, 116 (1970).

Second. Congress' treatment in P.L. 89-715 (25 U.S.C. §§ 416-416j) of zoning and other land use regulations is persuasive evidence that county and city zoning ordinances are "state civil laws" authorized under P.L. 280 and that they are not "encumbrances" within the meaning of P.L. 280.

P.L. 89-715, enacted in 1966, authorizes the leasing of Indian lands on two reservations in Arizona, a non-P.L. 280 state. One, the San Xavier reservation is near Tucson. The other, the Salt River Pima-Maricopa, is near Phoenix.

Section 9 (25 U.S.C. § 416h) of the Act provides:

> The Papago Council and the Salt River Pima-Maricopa Community Council, with the consent of

> the Secretary of the Interior, are hereby authorized, for their respective reservations, to enact zoning, building and sanitary regulations covering the lands on their reservations for which leasing authority is granted by this Act *in the absence of State civil and criminal jurisdiction over such particular lands,* and said councils may contract with local municipalities for assistance in preparing such regulations. (Emphasis added.)

The legislation also (§ 10) contained the familiar disclaimer against authorizing alienation, encumbrance or taxation of Indian trust property and (§ 2) conferred jurisdiction on the local federal district court over litigation brought by the State of Arizona or any political subdivision contiguous to the reservations to abate nuisances, or conditions hazardous to health or property, created by lessees of the Indian lands in question.

The legislative history of P.L. 89-715 shows that these provisions were included because Arizona had not brought itself under P.L. 280, thereby leaving a jurisdictional void that was delaying the opportunity to lease the lands in question. *See,* remarks of Congressman Haley, Chairman of the Indian Affairs Subcommittee of the House Interior Committee and floor manager of the bill, 112 Cong. Rec. 27000 (1966).

CONCLUSION

In view of the gravity of the issues raised in P.L. 280 states and the error of the court below, the writ of certiorari should be granted.

Respectfully submitted,

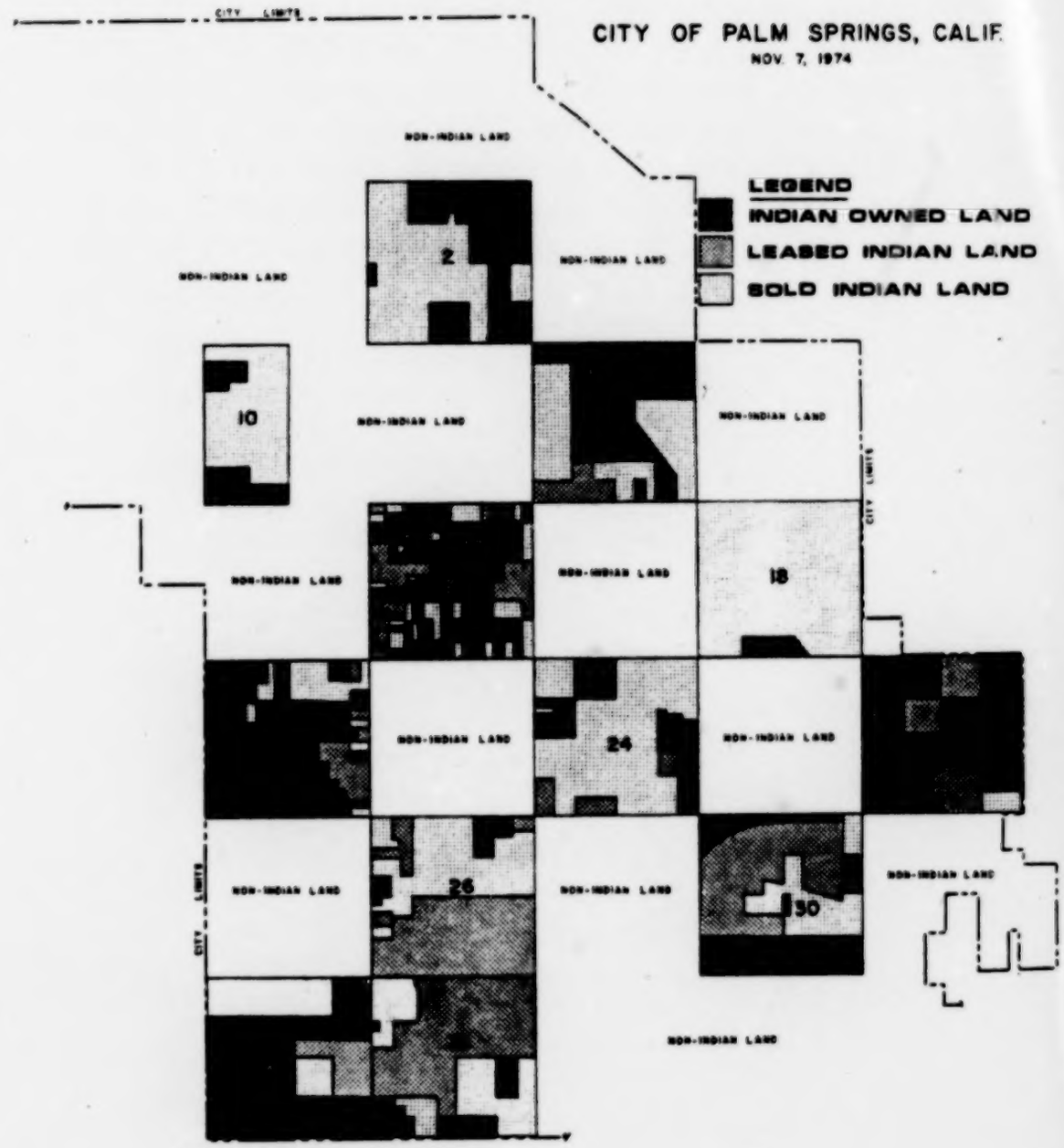
RAYMOND E. OTT, *City Attorney*
City of Palm Springs
3200 Tahiquitz-McCallum Way
P. O. Box 1786
Palm Springs, California 92262

EDWARD WEINBERG
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Attorneys for Amicus Curiae

Dated June 4, 1976

APPENDIX A


CITY OF PALM SPRINGS, CALIF.
NOV. 7, 1974
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Certificate of Service

I, Edward Weinberg, hereby certify that on June 4, 1976 the Brief for The City of Palm Springs, California as Amicus Curiae in Support of Petition for Writ of Certiorari in the above captioned proceeding was served upon all counsel, pursuant to Rule 33 of the Supreme Court Rules, by mailing copies by first class mail, postage prepaid, as follows:

PETITIONERS

Larry G. McKee
County Counsel
Kings County Courthouse
Hanford, California 93230

Roderick Walston
Special Deputy County Counsel
6000 State Building
San Francisco, California 94102

RESPONDENTS

George Forman
California Indian Legal Services
477 15th Street
Suite 200
Oakland, California 94612

EDWARD WEINBERG
1700 Pennsylvania Ave., N.W.
Washington, D. C 20006

Counsel for Amicus Curiae
City of Palm Springs, California

IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1674

KINGS COUNTY; CHARLES GARDNER, Planning Director and Chairman of the Planning Commission of Kings County; and KINGS COUNTY PLANNING COMMISSION,

Petitioners,

vs.

SANTA ROSA BAND OF INDIANS; MARK BARRIOS; and PETE BAGA,

Respondents.

Brief of the County of Riverside, State of California, as Amicus Curiae in Support of the Petition for a Writ of Certiorari.

RAY T. SULLIVAN, JR.,
County Counsel,
County of Riverside,

STEVEN A. BROILES,
Deputy County Counsel,
300 Law Library Building,
3535 Tenth Street,
Riverside, Calif. 92501,
(714) 787-2421,
Attorneys for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1674

KINGS COUNTY; CHARLES GARDNER, Planning Director and Chairman of the Planning Commission of Kings County; and KINGS COUNTY PLANNING COMMISSION,

Petitioners,

vs.

SANTA ROSA BAND OF INDIANS; MARK BARRIOS; and PETE BAGA,

Respondents.

Brief of the County of Riverside, State of California, as Amicus Curiae in Support of the Petition for a Writ of Certiorari.

The County of Riverside, a political subdivision of the State of California, hereby files this Brief as Amicus Curiae pursuant to Rule 42(4) of the Rules of the Supreme Court of the United States.

Interest of Amicus Curiae.

The County of Riverside is a general law county located in the southern part of the State of California. Organized in 1893, the County encompasses 7,200 square miles within its political boundaries. Included within the County are 11 Indian Reservations with

a total area in excess of 104,000 acres: Agua Caliente, Augustine, Cabazon, Cahuilla, Morongo, Pechanga, Ramona, Santa Rosa, Saboba, Torres-Martinez, and Colorado River. Not all of the land included within the boundaries of the reservations is contiguous; 6 reservations are composed of alternate sections of land arranged in an "impractical pattern of checkerboard jurisdiction" condemned by this Court in *Seymour v. Superintendent,* 368 U.S. 351, 358 n.16 (1962).

Today, a total of approximately 900 Indians and non-Indians reside on the reservations located within Riverside County. County roads serve each reservation, and children on the reservations attend local schools. With the exception of the small portion of the Colorado River Indian Reservation located in California, none of Indian bands occupying the Indian Reservations in Riverside County perform full law and order functions, relying instead on city and county officials. Several reservations are adjacent to or partially within, city boundaries. [38 F.R. 13758 (May 25, 1973).]

The County of Riverside in recent years has been involved in litigation in both the State and Federal courts concerning the scope of jurisdiction given State political subdivisions by P.L. 280 [28 U.S.C. §1360, 18 U.S.C. §1162]. *Ricci v. County of Riverside,* 71-1134-EC (C.D. Calif. Sept. 9, 1971), *dismissed as mot,* 495 F.2d 1 (9th Cir. 1974) [enforcement of county building code]; *Madrigal v. County of Riverside,* 70-1893-EC (C.D. Calif. Feb. 16, 1971), *aff'd*

on other grounds, 495 F.2d 1 (9th Cir. 1974) [enforcement of county rock festival ordinance]; *Imperial Sign Co. v. Municipal Court, Desert Judicial Dist.,* Indio No. 12425, Riv. Sup. Crt., Jan. 29, 1970 [enforcement of billboard restrictions against non-Indian lessee of trust land].

The judgment below adversely affects the administration of State and County programs, and law enforcement in Indian country within the County of Riverside by giving P.L. 280 a cramped and strained construction. For the reasons explained herein, the County of Riverside submits this brief, *amicus curiae,* for the purpose of urging the Court to grant the Petition for Certiorari and to reverse the decision of the Court of Appeals.

REASONS FOR GRANTING THE WRIT.

The Decision Below Conflicts With Decisions of the Same Circuit, Other Circuits, and of This Court.

The court below holds that P.L. 280 [28 U.S.C. §1360, 18 U.S.C. §1162] does not grant jurisdiction to the enumerated States to enforce the provisions of County zoning ordinances or building codes against Indians within Indian country. The court's opinion in this regard, rests on two conclusions:

1. County ordinances are not "civil laws of [the] State . . . that are of general application . . . within the State . . ." and therefore are not encompassed within the jurisdictional grant of P.L. 280.

2. County ordinances are "encumbrances" excluded from application in Indian country by 25 C.F.R. §1.4 and 28 U.S.C. §1360(b).

1. The Lower Court Has Misconstrued the Words "State Law" in P.L. 280.

The court below found the phrase "State Statute" used in P.L. 280 to be ambiguous[1] and subject to two interpretations: the phrase makes applicable to Indian reservations only those civil laws passed by the State Legislature which are of statewide application; or the phrase makes applicable to Indian reservations those civil laws which apply equally to Indians and non-Indians. [Slip Opinion p. 7, lines 11-16.]

The court resolved the ambiguity it found by choosing the first alternative. In so doing the court rejects the

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[1]In *Anderson v. Gladden,* 293 F.2d 463 (9th Cir. 1961), *cert. denied* 368 U.S. 949 (1961), a different panel of the same Circuit characterized the terms of P.L. 280 as "unambiguous."

suggestion that the legislative history indicates that Congress contemplated the application of the "full panoply of state, county and municipal ordinances faced by other citizens." The court was also aided in reaching its conclusion by what the court characterizes as a "principle" of construction and by the concept of "tribal self-rule".

In construing the phrase "State Statute" in 28 U.S.C. §1360(a) and 18 U.S.C. §1162(a) to include only those civil laws passed by the State Legislature which are of statewide application, the court has made an illogical and impractical distinction as to which State laws apply in Indian country, based upon the method of law's promulgation, and has ignored expressions of Congressional intent inconsistent with the court's construction.

The distinction made by the court between "State" and "local" laws ignores the relationship between the States and their political subdivisions and assumes a clear boundary exists between a "State" law and a "local" law. The boundary chosen by the court is the enacting authority.[2]

In making the distinction between "State" and "local" laws depend upon the territorial jurisdiction of the enacting authority, the court has rendered inapplicable to Indian country those laws that, although they embody a policy of statewide concern, rely in whole or in part upon legislative implementation by political agencies and subdivisions of the State.[3]

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[2]This distinction fails to recognize the part court decisions play in "making" State laws. *Sessions Inc. v. Morton,* 348 F.Supp. 694, 700-701 (1972), *aff'd,* 491 F.2d 854 (9th Cir., 1974).

[3]This Court in construing the phrase "State Statute" used in 28 U.S.C. §2281 defining the jurisdiction of a three-judge

(This footnote is continued on next page)

Rendered unenforceable in Indian country are those provisions of the State Constitution and those enactments of the State Legislature that create and empower cites and counties and other State agencies to exercise legislative powers. *Cf., Palm Springs Spa v. County of Riverside,* 18 Cal.App.3d 372, 376, 95 Cal.Rptr. 879 (1971), holding California Indian reservations to be "geographically, politically, and governmentally within the boundaries of the State."

The opinion also denies to the State Legislature the ability to implement paramount State policies in Indian country by authorizing or requiring cities, counties, special districts and State officers or agencies to adopt local regulations, *e.g.,* prevention of forest fires, Cal. Pub. Res. Code §§4117, 4251-4257; control of air pollution, Cal. Health and Safety Code §§40100-40126, 40150-40161, 40200-40276, 40300-40392; coastal zoning, Cal. Pub. Res. Code §§27320, 27400; flood plain regulation, Cal. Water Code §§8410, 8411; environmental quality, Cal. Pub. Res. Code §§21001 (f), 21092; solid waste management, Cal. Govt. Code §§66730, 66732 [compare, *Snohomish County v. Seattle Disposal Co.,* 70 Wash.2d 668, 425 P.2d 22 (1967), *cert. denied,* 389 U.S. 1016 (1967)]; airport hazard zoning, Cal. Govt. Code §§50485-50485.14, 21661.5, 21670, 21675; water quality control, Cal. Water Code §§13222, 13225, 13243; control of waste discharge from houseboats, Cal. Water Code §§13904-13906; construction in beds of mapped highways, Cal. Streets and Highways Code §§740.4-741.2; regulation of outdoor advertising, Cal. Bus. and Prof. Code §§5230, 5320.

court, rejected a definition that depended upon the method of adoption of the statute, *American Federation of Labor v. Watson,* 327 U.S. 582, 592-593 (1946).

Indeed, Counties would appear to lack the ability to exercise the authority given them under State Statute to regulate vehicle speed and use of County roads in Indian country. Cal. Vehicle Code §§21100, 21102, 22357, 22358. *Ortiz-Barraza v. U.S.,* 512 F.2d 1176, 1180 (9th Cir. 1975).

Both the Kings County ordinances held by the court to be inapplicable to Indian country implement policies of the State Legislature.

Kings County is required by enactments of the State Legislature to adopt a building code and the substantive requirements of the code are closely prescribed by the Legislature. *Green v. Superior Court,* 10 Cal.3d 616, 627, 111 Cal.Rptr. 704, 517 P.2d 1168 (1974); Cal. Health and Safety Code §§17922, 17950, 17958; see also 55 Ops. Cal. Atty. Gen. 157 (1972).

Similarly, the Kings County zoning ordinance is a response to a mandate of the State Legislature. Cal. Govt. Code §§65300-65303, 65563, 65910, 65800 and 65860.

The court not only strikes down the application of "local regulations" to Indian country, but also holds that P.L. 280 is the exclusive source of the State's governmental jurisdiction over Indian country:[4]

> . . . We have little doubt that Congress assumed and intended that states had no power to regulate the Indian use or governance of the

[4]The statement by the court is overbroad, unless the court is "overruling" *Langford v. Monteith,* 102 U.S. 145 (1880); *United States v. McBratney,* 104 U.S. 621 (1882); *Draper v. United States,* 164 U.S. 240; *Thomas v. Gay,* 169 U.S. 264 (1898); *Surplus Trading Co. v. Cook,* 281 U.S. 647, 651 (1930); *United States v. McGowan,* 302 U.S. 535, 539 (1938); *Organized Village of Kake v. Egan,* 369 U.S. 60, 71-75 (1962).

reservation provided, except as Congress chose to grant that power, *McClanahan, supra,* at 175. Indeed, P.L. 280, by defining the limits of the jurisdiction granted "P.L. 280 states" such as California, necessarily pre-empts and reserves to the Federal Government or the tribe jurisdiction not so granted. [Citation.] [Footnote omitted. Slip Opinion p. 4, line 21, to p. 5, line 3.]

By holding that political subdivisions of a P.L. 280 State need a Congressional grant of authority in order to acquire civil and criminal jurisdiction,[5] the court may have deprived all Indian country in California of access to the State's municipal and justice courts. The territorial jurisdiction of these courts is defined by County ordinance. Cal. Govt. Code §71040. See *Kennerly v. District Court,* 440 U.S. 423 (1971).

The result of the court's opinion is that California Indians residing in Indian country, in addition to being outside County legislative power, are not subject to the enactments of the State Legislature relying on city, county or administrative agency implementation and that apply to non-Indian citizens elsewhere within the State. This construction of P.L. 280 is not shared by the Eighth Circuit which in *Kills Crow v. United States,* 451 F.2d 323 (8th Cir. 1971), *cert. denied,* 405 U.S. 99 (1972), characterized P.L. 280 as follows:

> Significant limitations of an alternative to wardship already have been provided. Thus criminal and civil jurisdiction over Indians living on reservations in several states has been given up by the federal government, and the laws of those states now apply generally to Indians as to all other state citizens. See, e.g., 18 U.S.C. §1162; 28 U.S.C. §1360. . . . [451 F.2d at 326 n.4.]

[5]There is no existing authority whereby political subdivisions of a state could acquire jurisdiction over Indian country, even with the consent of the affected Indians. Existing legislation providing for acquisition of civil and criminal jurisdiction applies only to "States." 25 U.S.C. §1322.

The opinion is also inconsistent with the statement made by the Supreme Court in *Organized Village of Kake v. Egan,* 369 U.S. 60, 74 (1962), that P.L. 280 granted the enumerated States "full civil and criminal jurisdiction over Indian reservations."

a. *Legislative History.*

In support of its conclusion that Congress did not intend "local" ordinances to apply in Indian country, the opinion states that there is "nothing specific in the legislative history shedding any light on whether or not Congress intended to subject reservation trust lands to local civil or criminal ordinances." [Slip Opinion p. 9, lines 18-21.] This is not correct.

The opinion rejects as applicable the broad purposes statement made in the House and Senate reports on P.L. 280:

> . . . The broad language in the legislative history relied on by the County announces the congressional objectives of the entire termination process, but was not meant to describe the interim status of Indians or trust lands before completion of the process. [Slip Opinion p. 12, lines 7-11.]

Another panel of the same Circuit reached a different conclusion in *Capitan Grande Band of Mission Indians v. Helix Irrigation District,* 514 F.2d 465 (9th Cir. 1975;, *cert. denied,* 44 U.S.L. Week. 3205 (U.S. Oct. 6, 1975):

An examination of the legislative history of P.L. 280 indicates that the measure had two coordinate aims: "First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such." H.R. Rep. No. 848, 83d Cong., 1st Sess. 3 (1953), adopted in S.Rep. No. 699, 83d Cong., 1st Sess. 3 (1953), 2 U.S. Code Cong. & Admin. News 2409 (1953). The report also stated that:

> [T]he Indians of several states have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States *insofar as those laws are of general application to promote persons or private property,* is deemed desirable. H.R. Rep. No. 848 at 6, S.Rep. No. 699 at 5, 2 U.S. Code Cong. & Admin. News 1953, at p. 2412 (emphasis added).

The emphasis upon laws "of general application to private persons or private property" is significant. While by the terms of P.L. 280 Congress, *inter alia,* may have "intended to grant to the state the full exercise of police power," and thus the ability to enforce, e.g., zoning ordinances or gambling ordinances, and to apply its statutes of limitations to ordinary commercial transactions "between Indians or to which Indians are parties," it is not at all clear that Congress meant for

> a state statute of limitations to apply in a lawsuit initiated by an Indian band against a third party for damages to its property interests held in trust by the United States for the benefit of the land. . . . [Footnotes omitted. 514 F.2d at 467-468.]

The Eighth Circuit is also in accord with the above-quoted statements from the *Capitan Grande* case. *Omaha Tribe of Indians v. Peters,* 516 F.2d 133, 137 (8th Cir. 1975).

The legislative history of P.L. 280 discloses that "local authorities" were consulted by the Bureau of Indian Affairs prior to congressional action on P.L. 280. Such consultation would have been unnecessary under the court's construction of "State Statute". 1953 U.S. Code Cong. and Adm. News 2413-2414; *Rincon Band of Mission Indians v. County of San Diego,* 324 F.Supp. 371, 374-375 (S.D. Cal. 1971); *rev. on other gds.,* 495 F.2d 1 (9th Cir. 1974).

Companion legislation to P.L. 280, Section 2 of the Act of August 15, 1953, c. 502, 67 Stat. 586 (19 U.S.C. §1161), eliminating discriminatory Indian liquor laws also contains a reference to "State" laws. The legislative history of the Act clearly indicates that "local" municipalities were included within the jurisdictional grant therein contained, 1953 U.S. Code Cong. and Adm. News 2399-2400.

The year following enactment of P.L. 280, the Special Subcommittee on Indian Affairs to the House Committee on Interior and Insular Affairs discussed P.L. 280 as follows:

> Law and order functions of the Indian Bureau can and should be entirely transferred to the States. Public Law 280 of the 83d Congress operated to (1) confer as of enactment date, civil and criminal

jurisdiction in California, Minnesota (except Red Lake), all of Nebraska, Oregon (except Warm Springs), and Wisconsin (except Menominee); . . . [H.R. Rep. No. 2680, 83d Cong., 2d Sess. 5 (1954).]

Finally there is Section 9 of the Act of November 2, 1966, Pub. L. 89-715, 80 Stat. 1112 (25 U.S.C. §416h). This section authorized certain Indian tribes in a non-P.L. 280 State to enact for their respective reservations "zoning, building, and sanitary regulations . . . in the absence of state civil and criminal jurisdiction. . . ." The legislative history of the Act indicates that Congress assumed that the special authorization to the Indian tribes to adopt land use controls would be unnecessary once P.L. 280 was adopted. The legislative history also indicates, contrary to the opinion of the lower court that zoning and building controls would be a burden and have a "devastating impact" on economic development of Indian reservations, that Congress found such controls to be an imperative to economic development!

> MR. HALEY: . . . I certainly concur with the expression of opinion that the State of Arizona should take affirmative action as authorized under Public Law 280, of the 83d Congress. I hope the State will do this promptly.
>
> However, it should be pointed out that the State of Arizona could have assumed this jurisdiction any time within the last 13 years. I have no way of knowing, and I presume the gentleman has no way of knowing as to when, if ever, the State of Arizona intends to assume such jurisdiction.

> These Indian lands are ripe for development. In at least one reservation, there are allotted lands which could be disposed of now, without any plan, and without any regulation by the laws of zoning, sanitation or construction of any jurisdiction. There are plans afoot, particularly in the Salt River Pima-Maricopa Reservation for planned development of the whole reservation, including the allotted lands, I can well imagine that this plan might fall apart unless it is implemented with a reasonable period of time.
>
> Certainly, the Secretary of the Interior should give the State of Arizona reasonable time to allow it to assume the jurisdiction contemplated by Public Law 208 [*sic*, should be 280]. However, it is certainly not my intention that development of these reservations must await forever—this type of action by the legislature of Arizona. We have no way of knowing whether the legislature will ever act or not. It would certainly be manifestly unfair to make the Indians wait for an indeterminate period of time to develop their lands, pending the resolution of a situation which they have no possibility of control. [112 Cong. Rec. 27000 (1966).]

In support of its construction of P.L. 280, the lower court finds a consistency between its holding and the "present" Indian policy of Congress. The sources cited for divining the "present" policy of Congress are not the amendment or repeal of P.L. 280 or similar legislation enacted in 1948, 1950 and 1968[6] by Congress,

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[6]Act of July 2, 1948, c. 809, 62 Stat. 1224 (25 U.S.C. §232); Act of September 13, 1950, c. 845, 64 Stat. 845 (25 U.S.C. §233); 1968 Civil Rights Act, Act of April 11, 1968 (Pub. L. 90-284), 82 Stat. 78-79 (25 U.S.C. §§1321, 1322).

but a text, several law review artieles and the Indian Financing Act of 1974, 25 U.S.C. §1451 *et seq.* [Slip Opinion, p. 13, line 21, to p. 14, line 13.] This is hardly an example of an "unmistakable directive" that this Court looks for, before it construes an act of Congress in a manner that runs counter to the broad goals which Congress intended it to effectuate. *Federal Trade Commission v. Meyer,* 390 U.S. 341, 349 (1968).

In *Menominee Tribe v. United States,* 391 U.S. 404 (1968), P.L. 280 and the Menominee Termination Act were construed in accordance with the "overall legislative plan" of Congress at the time the two Acts were approved by Congress, not according to the Court's notion of the policy of Congress in 1968.

b. *"Principle" of Construction.*

In resolving the ambiguity the court finds in the phrases "State Statute" and "encumbrance" used in P.L. 280, the opinion relies upon a canon of construction stated by the court as follows:

> . . . that ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians. [Slip Opinion, p. 7, lines 19-21.]

This rule is characterized by the court as a "principle . . . somewhat more than a canon of construction. . . ." This "principle" the court cites as general authority for it to construe Acts of Congress in a manner consistent with the Court's conception of what is favorable to the Indians upon the mere conclusion by the court that the statute is in part "ambiguous."

> . . . While there is legally nothing to prevent Congress from disregarding its trust obligations

> and abrogating treaties or passing laws inimical to the Indians' welfare, the courts, by interpreting ambiguous statutes in favor of Indians, attribute to Congress an intent to exercise its plenary power in a manner most consistent with the nation's trust obligations. . . . [Slip Opinion p. 8, lines 9-15.]

Opinions by the Supreme Court disagree with the lower court's application and definition of the canon. Recently, the Supreme Court in *Antoine v. Washington,* 420 U.S. 194 (1975), stated the canon as follows:

> The canon of construction applied over a century and a half by this Court is that the wording of treaties and statutes ratifying agreements with the Indians is not to be construed to their prejudice. [Citations omitted.] In *Choate v. Trapp, supra,* also a case involving a ratifying statute, the Court stated, "[t]he construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith." 224 U.S., *supra,* at 675. . . . [420 U.S. at 199-200.]

P.L. 280 is not a statute ratifying an agreement with the Indians or one passed for the benefit of Indians, but one defining Federal-State relations. *Quinault Tribe of Indians v. Gallagher,* 368 F.2d 648, 653 (9th Cir. 1966), *cert. denied,* 387 U.S. 907 (1967). According to *United States v. First National Bank,* 234 U.S. 245, 259 (1914), the canon of construction is not applicable where the statute is not

in the nature of a contract and does not require the consent of the Indians to make it effectual. See also *Capoeman v. United States,* 440 F.2d 1002 at 1008 (Ct. Cl., 1971).

But even assuming that the canon of construction could properly be applied to interpret P.L. 280, its sole function, as with all canons of construction, is to discover Congressional intent. *United States v. Rice,* 327 U.S. 742, 753 (1946). It is not authority for the courts to overcome the plain meaning of acts of Congress in following a policy the courts believe preferable to that determined by Congress. As stated in *United States v. Choctow Nation,* 179 U.S. 494 (1900):

> But in no case has it been adjudged that the courts could by mere interpretation or in deference to its views as to what was right under all the circumstances, incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded because, in the opinion of the court, that meaning may in a particular transaction work what it would regard as injustice to the Indians. That would be an intrusion upon the domain committed by the Constitution to the political departments of the government. . . . [179 U.S. at 532.]

This rule has been adhered to even where the effect of legislation was to the severe detriment of the Indian. *United States v. First National Bank,* 234 U.S. 245 (1914).

c. *"Tribal Self-Rule."*

"Tribal self-rule" is also cited as a justification for the court's holding. In so doing, the court adheres to the *Worchester v. Georgia* "platonic" notion of Indian sovereignty as an independent source of authority to strike down "interfering" State legislation. See *Williams v. Lee,* 358 U.S. 217 (1959). This rationale was disapproved in *McClanahan v. Arizona State Tax Comm'n,* 411 U.S. 164 (1973):

> Finally, the trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal preemption. See *Mescalero Apache Tribe v. Jones,* 411 U.S. 145. The modern cases thus tend to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power. Compare, e.g., *United States v. Kagama,* 118 U.S. 375 (1886), with *Kennerly v. District Court,* 440 U.S. 423 (1971). [Footnotes omitted. 411 U.S. at 172.]

The Supreme Court in a footnote later in the opinion further reinforced its disapproval of the "interference" test of *Williams.* 411 U.S. at 180 n.21.

The lower court approaches the construction of P.L. 280 with a fixed opinion as to the scope of tribal self-rule, instead of viewing the scope of tribal self-rule as a by-product of defining the limits of state power vis-a-vis federal control.

It is pure fiction to attribute an intent to Congress to "distribute" jurisdiction in such a manner as to make "tribal government over the reservation more

or less the equivalent of a county or local government in other areas within the state, empowered, subject to the paramount provisions of state law, to regulate matters of local concern within the area of its jurisdiction." [Slip Opinion p. 12, line 25, to p. 13, line 3.]

P.L. 280 was enacted because tribal government in many States had broken down, and this appears in the legislative history to P.L. 280:

> As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.
>
> Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable. [1953 U.S. Code Cong. and Adm. News 2411-2412.]

Those Indian tribes in P.L. 280 States with a functioning tribal government and not consenting to State jurisdiction, were excluded from the operation of P.L. 280. 1953 U.S. Code Cong. and Adm. News 2412.

The absence or breakdown of tribal government in California that made necessary the enactment of P.L. 280 was brought out in pre-enactment congressional hearings. See, Hearings on H.R. 459, H.R. 3225, H.R. 3624 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 82d Cong., 2d Session, ser. 11 (1952) at 78; see also, *People v. Bray*, 105 Cal. 344, 347, 38 Pac. 731 (1894).

2. The Court Has Misconstrued the Word "Encumbrance" in P.L. 280 and 25 C.F.R. §1.4.

The second alternative ground cited by the court for its decision is that the Kings County zoning ordinance and building code are regulations of the use of trust lands inconsistent with 25 C.F.R. §1.4, and that the ordinance and code are prohibited "encumbrances" on Indian land within the limitations of 28 U.S.C. §1360(b).

a. *25 C.F.R. §1.4.*

In holding 25 C.F.R. §1.4 applicable to this case, the court ignores the plain language of the regulation, and the absence of specific Congressional authorization for the regulation.

By its own terms, and the intent expressed by the Secretary of Interior in promulgating 25 C.F.R. §1.4, the regulation was to apply only to *leased* Indian trust property. The lower court does not explain or justify the extension of this regulation to the facts of this case. The Secretary stated:

> The purpose of this addition is twofold. First, it will enunciate and particularize in regulatory form for the benefit and guidance of those con-

> cerned the sense of existing law under which laws, ordinances, codes, resolutions, rules or other regulations of a State or its political subdivisions limiting, zoning, or otherwise governing, regulating or controlling the use or development of property are inapplicable to trust or restricted Indian property held or used under a lease or other agreements. . . . [30 Fed. Reg. 6438 (May 7, 1965)].

The above quote also demonstrates that the Secretary of Interior was adopting an "interpretative" regulation and not a "legislative" regulation. The difference between the two types of regulations is summarized in the Final Report of the Attorney General's Committee on Administrative Procedure (1941):

> Administrative rule-making in any event, includes the formulation of both legally binding regulations and interpretative regulations. The former receive statutory force upon going into effect. The latter do not receive statutory force and their validity is subject to challenge in any court proceeding in which their application may be in question. The statutes themselves and not the regulations remain in theory the sole criterion of what the law authorizes or compels and what it forbids . . . [Id. at 100.]

An "interpretative" regulation is merely a reflection of the authority it interprets and cannot extend or reduce the scope of the act of Congress it interprets. *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284 (1954). As an "interpretative" regulation, 25 C.F.R. §1.4 adds nothing to the meaning of the word "encumbrance" used in 28 U.S.C. §1360(b).

The lower court treats 25 C.F.R. §1.4 as a "legislative" type regulation. The Secretary of Interior lacks general regulatory powers over Indian affairs and must be specifically authorized by Congress to adopt "legislative" regulations. *Metlakatla Indian Community v. Egan,* 369 U.S. 45 (1962); *Organized Village of Kake v. Egan,* 369 U.S. 60 (1962). The specific congressional authority cited by the court to support the regulation is 25 U.S.C. §465, which authorizes the Secretary to purchase land and hold it in trust for the "purpose of providing land for Indians." This section, however, does not authorize the Secretary to regulate the use of the lands purchased by the Secretary and such authorization would appear to be necessary under the *Metlakatla* case in order to treat 25 C.F.R. §1.4 as a "legislative" type regulation.

In the *Metlakatla* case, the Court, in interpreting Public Law 280, held that an Alaska law prohibiting fish-traps would not be enforceable on the Metlakatla reservation where it is inconsistent with a regulation of the Secretary of the Interior authorizing their use. Authority for the Secretary to regulate the land use on the reservation was found in the act establishing the reservation (48 U.S.C. §358): the land is "to be held and used by them [the tribe] in common, under such rules and regulations, subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior." There is no similar act of Congress specifically authorizing the Secretary of the Interior to regulate land use on the Santa Rosa Rancheria. To the extent then, that 25 C.F.R. §1.4 is inconsistent with P.L. 280, it cannot prevail and is void in the same manner as the Secretary's fish-trap regulation was, outside the Metlakatla reservation. *Organized Village of Kake v. Egan,* 369 U.S. 60 (1962).

b. *"Encumbrance."*

The use of the word "encumbrance" in 28 U.S.C. §1360(b) the court finds ambiguous and relying upon its announced "principle" of construction, concludes that the word "may reasonably be interpreted to deny the state the power to apply zoning regulations to trust property." [Slip Opinion p. 23, lines 10-11.] The lower court notes in a different context, the regulation of the Secretary adopting and making applicable State zoning ordinances [30 Fed.Reg. 8722 (July 9, 1965)] but does not follow through with the implication that flows from its construction of "encumbrance" and strike these regulations down along with 25 C.F.R. §1.4(b). In fact, the court reiterates its validation of 25 C.F.R. §1.4.

Not only is the lower court's interpretation of "encumbrance" in 28 U.S.C. §1360(b) inconsistent with the authority retained by the Secretary of Interior in 25 C.F.R. §1.4(b), but renders 28 U.S.C. §1360(b) internally redundant, is inconsistent with a related but subsequent act of Congress, and in conflict with the interpretation placed on the word in one of the acts of Congress creating and defining the trust states of Indian land.

Section 1360(b) of Title 28, United States Code provides in part:

> Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, . . .; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; . . .

If the court is correct in its construction that a regulation of the use of Indian trust land is an "encumbrance", then the second clause of 28 U.S.C. §1360(b) is redundant to the first clause.[7] What is more likely, is that Congress did not regard a zoning ordinance or a building code as an "encumbrance" on Indian land.

In 1966, Congress authorized certain Indian communities in Arizona to enact zoning, building, and sanitary regulations in the absence of the State assuming P.L. 280 jurisdiction. Act of November 2, 1966, Pub. L. 89-715, 80 Stat. 1112, §9 (25 U.S.C. §416h). Another section of the same Act, states that:

> Nothing contained in this Act shall—(a)uthorize the alienation, encumbrance, or taxation of any interest in real or personal property, . . . [Act of November 2, 1966, Pub. L. 89-715, 80 Stat. 1112, §10 (25 U.S.C. §416i).]

If Congress considered zoning ordinances and building codes to be "encumbrances" then it authorized the enactment of "encumbrances" in Section 9 of the Act while disclaiming the intent to do so in Section 10.

The words "alienation, encumbrance, or taxation", are not unique to P.L. 280. Similar terms have been

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[7]The opinion in footnote 20 attempts to avoid the internal redundancy caused by its construction by interpreting "encumbrance" to preclude "all regulation or restrictions attached directly to land use" and the second clause of 28 U.S.C. §1360(b) and 18 U.S.C. §1162(b) as encompassing "all activity located on reservation land, permitting comprehensive state regulation except where preempted by or inconsistent with overriding Federal enactments." But, by equating the statutory language, "use of such property", with "all activity located on reservation land" the court, under the second clause, acknowledges the power of the State legislature to regulate the activity, manner, purpose, or object to which persons employ or utilize property in Indian country (absent overriding Federal enactments), while interpreting the first clause as preventing such regulation.

employed by Congress in other acts in connection with Indian trust property, *e.g.*, General Allotment Act of February 8, 1887, c. 119, 24 Stat. 388. The use of the same words in various acts in connection with Indian property indicates that the words enjoy the same meaning. This connection was made by another panel of the Ninth Circuit in *Kirkwood v. Arenas,* 243 F.2d 863 (9th Cir. 1957):

> The District Court held that when Congress enacted legislation ceding limited state jurisdiction over civil and criminal actions in Indian lands of California, and in such legislation declared that:
>
> "Nothing . . . [herein] shall authorize the alienation, encumbrance, or taxation or any real or personal property . . . belonging to any Indian . . . that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States . . ." 67 Stat. 588, 589, Act of August 15, 1953, 28 U.S.C. §1360(b), 18 U.S.C. §1162(b).

it intended to exempt such Indians' land from direct taxation. We doubt the validity of such construction. *Rather, we think the quoted part of the Act merely negatives the idea that any change in the law as to "alienation, encumbrance, or taxation", of Indians' property was intended.* The quoted part of the Act, however, is entirely consistent with, and in effect is a reaffirmation of, the law as it stood prior to its enactment, . . . The legislative history of the provision supports the view we here express. See Legislative History of Title 28, U.S.C. §1360, Act of Aug. 15, 1953, U.S. Code, Congressional and Administrative News, Vol. 2, p. 2409. . . . [Emphasis added. 243 F.2d at 865-866.]

The question of the construction of the word "encumbrance" appearing in the General Allotment Act of 1887, was recently before the Court of Claims in *Quinault Allottee Assoc. v. United States,* 485 F.2d 1391, 202 Ct. Cl. 625 (1973), *cert. denied,* 416 U.S. 961 (1974). The court held:

> . . . In 1887 Congress was speaking only in conventional terms of an encumbrance on the fee, such as would be represented by a lien or a mortgage. . . . [485 F.2d at 1396.]

The Court of Claims specifically rejected the argument that the term was ambiguous. 485 F.2d at 1400.

Conclusion.

For the reasons set forth in this brief, we respectfully urge the Court to grant the Petition for Writ of Certiorari and reverse the judgment of the Court of Appeals.

Respectfully submitted,

RAY T. SULLIVAN, JR.,
County Counsel,
County of Riverside,

STEVEN A. BROILES,
Deputy County Counsel,
Attorneys for Amicus Curiae.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, et al.,
Plaintiffs and Respondents

vs.

KINGS COUNTY, et al.,
Defendants and Petitioners

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief of Amicus Curiae State of California Department of Housing and Community Development in Opposition to the Petition for Writ of Certiorari

EMERSON W. RHYNER, Special Counsel
State of California
Business and Transportation Agency
Sacramento, California 95814

J. CLEVE LIVINGSTON, Counsel,
California Indian Assistance Program
State of California
Department of Housing and Community Development
Sacramento, California 95814
(916) 445-4725

ROBERT A. FIREHOCK, General Counsel
State of California
Department of Housing and Community Development
Sacramento, California 95814

Attorneys for Amicus Curiae

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Brief of Amicus Curiae State of California Department of Housing and Community Development in Opposition to the Petition for Writ of Certiorari

JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C. § 1254(1), Kings County has petitioned this Honorable Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975). This amicus curiae brief is respectfully submitted by the State of California Department of Housing and Community Development pursuant to Rule 42(1) of the Rules of the Supreme

Court of the United States with the consent of all the parties to the case.

Interest of the Amicus Curiae State of California Department of Housing and Community Development

The State of California Department of Housing and Community Development (hereinafter Department) is a statutory State department within the Business and Transportation Agency. The Department has a vital interest in this case arising out of its statutory duties towards California Indians in relation to housing and community development issues. A decision contrary to the position advocated by the Santa Rosa Band of Indians would adversely affect the Department's efforts to aid California Indians on Federally owned trust lands and put increased demands on already scarce financial resources available for Indian housing and community development activities.

The Department is the principal State agency charged with effectuating the housing policy of the State of California as set out in the Housing and Home Finance Act of 1975, Chapter 1, Statutes of 1975, Health and Safety Code §§ 41100 *et seq.* This act assigns to the Department general duties which include responsibility for coordinating the federal-state relationship in housing and community development, continually evaluating the impact upon the State of federal policies and programs affecting housing and community development, and encouraging the

full utilization of available federal programs. Health and Safety Code § 41108. In addition, the act includes provisions specifically recognizing the needs of California Indians. Section 41161 of the Health and Safety Code authorizes the Department to:

> "furnish counseling and guidance services to aid any governmental agency or any private or non-profit organization or persons in securing the financial aid or cooperation of governmental agencies in the undertaking, construction, maintenance, operation or financing of housing for Indians, . . ."

and to:

> "contract for or sponsor, subject to the availability of federal funds, experimental or demonstration projects for permanently fixed or mobile housing designed to meet the special needs of . . . Indians"

Of even greater significance is Section 41173 of the Health and Safety Code which empowers the Department to:

> "provide comprehensive technical assistance to tribal housing authorities, housing sponsors, and governmental agencies on reservations, rancherias, and on public domain to facilitate the planning and orderly development of suitable, decent, safe, and sanitary housing for American Indians residing in such areas. Such assistance may include technical assistance in land use planning, natural and environmental resource planning, and economic resource planning. Upon request of the gov-

erning body of a reservation or rancheria, the department may act on behalf of the tribal housing authority and perform the functions thereof and for such purposes shall have all the powers granted to housing authorities . . ."

To implement its technical assistance role the Department operates the California Indian Assistance Program under an interagency agreement with the Governor's Office of Planning and Research.

I. Magnitude of the Problem Facing the Department in Providing Assistance to Indians in California

In its efforts to assist in securing adequate housing for reservation Indians, to promote development of Indian resources, and to facilitate coordination among the various state and federal agencies so as to assure the delivery of mandated services, the Department's California Indian Assistance Program confronts a housing problem of an overwhelming dimension. As the California Advisory Commission on Indian Affairs reported to the Governor and Legislature in 1966:

> "[t]he conditions under which Indians live in California are the lowest of any minority group. Housing is grossly inadequate: living quarters are small, crowded and poorly furnished; existing houses are structurally unsound; foundations are lacking in many cases; the building materials used, together with faulty electrical wiring and the unsafe use of gas, kerosene, and wood stoves, constitute a constant menace to life; houses generally do not provide the minimum necessary protection from extreme climatic conditions. Reports from federal, state and local agencies agree with the commission's findings: from 30 to 50 percent of the homes need complete replacement and 40 to 60 percent need improvements; taken together, this means that 90 percent of all homes need replacement or repairing to provide adequate living quarters for California Indians." *California Advisory Commission on Indian Affairs, Progress Report to the Governor and the Legislature on Indians in Rural and Reservation Areas,* February 1966, at 10.

The 1974 Bureau of Indian Affairs inventory of the housing needs of California Indians residing on trust lands indicates that of 1,611 Indian-occupied units located on trust lands, 891 were in substandard condition. Of those substandard units 679 were dilapidated beyond repair, requiring complete replacement. In addition, 593 units were needed to fulfill the additional formal requests received by the Bureau from enrolled tribal members presently without reservation housing of any sort. *Consolidated Housing Inventory, FY 74, On-Trust Land Housing Chart, Bureau of Indian Affairs, Sacramento Area Office.*

Living conditions on the Santa Rosa Rancheria bear striking testimony to the extent of deprivation throughout the state. The most recent survey of the Rancheria indicates a total resident population of approximately 144 tribal members; yet, there are only 18 permanent homes in the community. *Hirshen, Gammill, Trumbo, and Cook, Report to the California Department of Housing and Community Development,*

Small Parcel Survey of the Santa Rosa Rancheria, June 1976, at 1–2. These homes, most of which were built in 1967 by the Bureau of Indian Affairs, are rapidly deteriorating and already require extensive rehabilitation if they are to provide a decent, safe, and healthy living environment.[1]

Even more serious than the condition of the houses, however, is the extent of overcrowding on the Rancheria. There are approximately three nuclear family units per house. *Hirshen Report, supra,* at 2. Some houses have as many as 14 people living in them. *Id.* The extreme overcrowding coupled with lack of sufficient family income for maintenance, further increases the rate at which existing housing is deteriorating. It was this overcrowding in substandard dwellings that the plaintiffs, the Barrios and Baga families, sought to escape by purchasing mobilehomes through the Bureau of Indian Affairs Housing Improvement Program.

Inadequate living conditions such as those found on the Santa Rosa Rancheria are reflected in the health of those who must endure them. The California Advisory Commission on Indian Affairs reported in 1970 that, among California Indians, "the death rate from

[1] The Santa Rosa Rancheria Housing Assistance Plan (HAP), prepared pursuant to § 104(a)(4) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304, and submitted to the U.S. Department of Housing and Urban Development as part of the Rancheria's 1976 Title I Block Grant Application, notes that all housing on the Rancheria is substandard. A substandard dwelling unit is defined by the HAP as "one which contains a condition which places the occupants thereof in a situation which is unsafe and/or unhealthy and therefore unfit and undignified for human habitation." HAP, at 5.

influenza and pneumonia is more than twice that of the total population; tuberculosis, six times; [and] accidents, four times . . ." *California Advisory Commission on Indian Affairs, Final Report,* 1969, at 21. Even more striking, "the average age at death for Indians is twenty years less than the average for all Californians." *Id.* at 21. In testimony given before the Subcommittee on Indian Affairs of the United States Senate, Dr. Elmer A. Johnson, Assistant Surgeon General and Director of the Indian Health Services, pointed to the connection between Indian health problems and the environment in which Indians live:

> The lack of decent, safe and sanitary housing for the Indian population contributes to a number of their unusual health problems. For example, while the infant death rates for Indians and Alaska Natives compare quite favorably to that of the U.S. general population during the first 28 days of life; the rate of death of Indian and Alaska Native infants between the 28th day of life and the 11th month is more than twice the similar rate for the U.S. general population. One of the causes of this significant increase in death rate during the post neonatal period is the poor home environment into which the infant is brought. The crowded living conditions, inadequate protection from the elements, and generally poor sanitary conditions prevalent in the typical substandard home, represent a hazardous environment for the Indian infant.
>
> Many of the infectious diseases which are usually prevalent among the Indian and Alaska Native populations result from, or are aggravated

by, the poor home environment. These diseases include gastroenteritis, dysentery, influenza, pneumonia and otitis-media.

Accidents are the leading cause of death for Indians and Alaska Natives with a death rate of nearly 4 times that of the general population. Accidental injuries resulted in over 200,000 outpatient visits during fiscal year 1974. This represents a significant patient care workload at the health facilities. Nearly 40% of the accidents resulting in a first clinic visit during 1974 occurred in or around the home. Many of these falls, burns and other accidental injuries occurring in the home environment could have been avoided if the home were well designed and constructed and properly equipped.

One of the essentials, if the Indian and Alaska Native people are to achieve the desired level of health, is a decent home located in a well planned community. Adequate space for family living, for sleeping areas, for studying and for personal privacy are essential considerations along with proper heating to protect the family from the elements, an ample supply of safe potable water, a sanitary means of disposing of waste and an equipped area for storage and preparation of food." Hearings on Indian Housing Before the Subcommittee on Indian Affairs, Committee of Interior and Insular Affairs, United States Senate, 94th Cong., 1st Sess. (1975) at 19–20.

The cost of rehabilitating existing reservation housing to a standard fit for human habitation far exceeds the resources made available by existing federal programs. Yet the cost of repair and replacement of the

existing housing stock represents only a fraction of the financial commitment that would be necessary were consideration given to the needs of those enrolled families holding valid homesite assignments on the Rancheria but unable to occupy them because housing cannot be obtained.

II. The Rationale for Not Applying Local Government Zoning and Building Ordinances in Indian Country

Given the tremendous need and the limited resources made available by the Federal Government to address this need, it is essential that the funding which is provided have maximum impact. Department efforts to upgrade the deplorable housing and living conditions found on reservations and rancherias are centered around maximizing the effectiveness of the limited federal resources made available through agencies such as the Bureau of Indian Affairs and the Indian Health Services. These efforts historically have been conducted within the framework of federal housing standards. The application of local zoning and building ordinances in place of the uniform federal standards under which the programs are presently administered would burden and potentially block the delivery of these vital services and facilities. *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975) at 668. It has been argued that the administration of local ordinances need not inhibit departmental programs, but, where approval is required to take action, the power to grant that approval is also the power to deny it. That this is the

case with respect to the zoning ordinance Kings County seeks to impose on Indian land is established by the fact that the county has on several occasions refused to approve requests by county residents to locate permanent family dwellings on agriculturally zoned land.[2]

Finally, the technical assistance role of this Department is aimed not only at securing adequate housing but also, in conformity with state and federal policy, at strengthening tribal self-government. To relegate tribal governments to a level below that of counties and municipalities would be to deprive them of significant jurisdiction essential to self-government.

III. The Issues Presented Have Already Been Satisfactorily Resolved by This Court

Kings County argues in its petition for a writ of certiorari that Public Law 83-280, 28 U.S.C. § 1360, confers upon counties authority to enforce their local building and zoning ordinances on land held in trust by the federal government for the use and benefit of Indian tribes. Petitioners seek to support their request by an extended analysis and criticism of the decision of the Ninth Circuit Court in *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975). It seems unnecessary, however, to address individually the arguments presented by Kings County in view of the fact that virtually all of the arguments

[2] Affidavit by the Planning Director of Kings County, Defendants Exhibit AA. Kings County has filed a motion with this Court to augment the record by inclusion of this affidavit. Kings County Petition for a Writ of Certiorari, p. 4.

upon which petitioners rely have been considered by this Court in its very recent decision in *Bryan v. Itasca County,* -------- U.S. --------, No. 75-5027 (Slip Opinion, June 14, 1976). In holding that Public Law 280 did not confer upon counties authority to impose a personal property tax on an Indian owned mobilehome located on trust lands, the *Bryan* decision expressly suggests that its reasoning with respect to tax laws applies equally to all civil regulatory ordinances:

> "[I]f Congress in enacting Public Law 280 had intended to confer upon the States general civil regulatory powers, including taxation, over reservation Indians, it would have expressly said so." *Bryan,* Slip Opinion at 17.

In the course of reaching this conclusion, the Court examined all of the major issues to which petitioner's brief and arguments are addressed. Those issues are:

1. The ambiguity of the controlling language in Public Law 280 which provides that "civil laws of [the] State . . . that are of general application to private persons or private property shall have the same force and effect within . . . Indian Country as they have elsewhere within the State." Public Law 83-280, Section 4(a), 28 U.S.C. § 1360(a). (Compare *Bryan,* Slip Opinion at 18 with petitioner's brief at 12, 16–17, and 40.)

2. The import of the canon of construction that "statutes passed for the benefit of dependent Indian tribes are to be liberally construed, doubtful expressions being resolved in favor of the Indians."

Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918) as cited in *Bryan,* Slip Opinion at 18–19. (Compare *Bryan,* Slip Opinion at 5 and 18–19 with Petitioner's brief at 12–13, 16 and 40.)

3. The implications of the legislative history in construing congressional policy and intent in enacting Public Law 280. (Compare *Bryan,* Slip Opinion at 5–12, and 14–17 with Petitioner's brief at 10–12, 17–19, 23, and 40.)

4. The appropriateness of reading into Public Law 280 through a negative implication of inclusion, a grant of jurisdiction for which the statute does not in its terms expressly provide. (Compare *Bryan,* Slip Opinion at 4–5, and 16–18 with Petitioner's brief at 13 and 22–23.)

5. The significance of intervening legislative enactments in construing prior congressional intent. (Compare *Bryan,* Slip Opinion at 12–14 with Petitioner's brief at 13–15.)

In each case the conclusion reached by this Court in the *Bryan* decision directly controverts the result suggested by Kings County in its petition for certiorari. There can be little doubt that this Court's disposition of these questions applies to those aspects of a county's civil regulatory authority involved in the *Santa Rosa* controversy as well as fully as they apply to the question of taxation involved in *Bryan.*

CONCLUSION

In light of the extensive consideration in *Bryan v. Itasca County* of the issues raised by petitioners, little purpose would be served by granting the petition for a writ of certiorari. Accordingly the petition for a writ of certiorari should be denied.

Respectfully submitted,

EMERSON W. RHYNER
Special Counsel
State of California
Business and Transportation Agency

J. CLEVE LIVINGSTON
Counsel, California Indian
Assistance Program
State of California
Department of Housing and
Community Development

ROBERT A. FIREHOCK
General Counsel
State of California
Department of Housing and
Community Development

ATTORNEYS FOR AMICUS CURIAE